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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 180

MINNESOTA STATE LIBRARY

ALLEN R. ENGLISH AND HONORA ENGLISH, HIS WIFE, APPELLANTS,

vs.

THE TERRITORY OF ARIZONA AT THE RELATION AND TO THE USE OF JOHN W. BOGAN, TREASURER AND *EX OFFICIO* TAX COLLECTOR IN AND FOR THE COUNTY OF PIMA, IN THE TERRITORY OF ARIZONA.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

FILED SEPTEMBER 5, 1908.

(20,857.)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 454.

ALLEN R. ENGLISH AND HONORA ENGLISH, HIS WIFE, APPELLANTS,

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THE TERRITORY OF ARIZONA AT THE RELATION AND TO THE USE OF JOHN W. BOGAN, TREASURER AND *EX OFFICIO* TAX COLLECTOR IN AND FOR THE COUNTY OF PIMA, IN THE TERRITORY OF ARIZONA.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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a In the Supreme Court of the Territory of Arizona.

No. 974.

ALLEN R. ENGLISH and HONORA ENGLISH, His Wife, Appellants,

vs.

THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

Record on Appeal.

1 In the Supreme Court of the Territory of Arizona.

THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Plaintiff and Appellee,

vs.

A. R. ENGLISH and HONORA ENGLISH, His Wife, Defendants and Appellants.

ABSTRACT OF RECORD.

Complaint.

The Territory of Arizona, who sues in this behalf at the re-
2 lation and to the use of John W. Bogan, Treasurer and *Ex-officio* Tax Collector within and for Pima County, Arizona Territory, for cause of action alleges:

I.

That the said Territory is a public corporation, duly created and existing by virtue of law; that the said County of Pima is a public corporation, duly created and existing by virtue of law, and is one of the political subdivisions of the said Territory; that the City of Tucson, hereinafter mentioned, is a public corporation, duly created and existing by virtue of law, and situated within the said County of Pima; and that John W. Bogan, aforesaid, is the duly elected, commissioned, qualified and acting Treasurer and *Ex-officio* Tax Collector in and for the County and Territory aforesaid, and is now engaged in the discharge of his duties as such, under and by virtue of the laws of said Territory.

II.

That the defendants herein are the owners of the following described tracts of land and town lots situated in the City of Tucson, and in the said County of Pima and Territory of Arizona, to wit:

Lot No. Five (5) in Block No. One Hundred and Ninety-
3 seven (197), according to the official survey of said city, and that said lot is contiguous to *said* block numbered 206.

III.

That the above described city lot was, for the purpose and to the amounts hereinafter set forth, subject to special assessment under the laws of the Territory of Arizona and the said City of Tucson.

IV.

That heretofore, to wit, on the 19th day of June, A. D. 1903, the Mayor and Common Council of Tucson passed an ordinance entitled "Ordinance No. 168, Providing for Altering and Widening Congress Street, Between Church Street and Court Street, in the City of Tucson, Arizona," a true copy of which ordinance is hereto attached and made a part hereof and marked "Exhibit A."

V.

That before said ordinance was passed a petition for the making of the improvement thereon ordered made, signed by the owners of a majority of the lineal frontage upon the improvement in said ordinance made, was filed with the City Recorder of said City of Tucson, as set forth in said ordinance.

4 VI.

That thereafter suit was commenced in the said above-named court, by the said City of Tucson, as plaintiff, and Lizzie J. Woods and others as defendants, which suit is numbered 3409, and in which said action the matters and things alleged in Paragraphs IV and V of this complaint were adjudged as true, and in said action said court entered an order of condemnation, as prayed, and the damages for the taking of the property, as contemplated in said ordinance, was adjudged to be the sum of Forty-six Thousand Five Hundred Dollars ($46,500.00).

VII.

That thereafter and in said proceeding the plaintiff therein, to wit, the City of Tucson, filed a supplemental petition praying said court to cause an assessment to be made for the purpose of raising the amount necessary to pay the compensation and damages which had been awarded to the property taken or damaged as aforesaid, with the cost of the proceeding. That thereafter, and on the 5th day of December, 1903, and in accordance with the prayer of said supplemental petition, said court appointed three commissioners, residents of said city, to make such assessment and to ascertain, as near
5 as may be, the costs incurred to the time of such appointment, and the probable further cost of the proceeding, including therein the estimated cost of making and collecting such assessment, and directing such costs to be included by such Commissioners in making such assessment. That one of the said Commissioners was the City Assessor of the said City of Tucson. That said Commissioners examined the locality where the said improvement was proposed to be made, and the lots, blocks, tracts and parcels of land that shall

be benefited thereby, and estimated what proportion of the total cost of such improvement would be of benefit to the public and what proportion thereof would be of benefit to the property to be benefited, and apportioned the same between the city and such property so that each had its relative equitable proportion; and having found such amounts, said Commissioners apportioned and assessed such amounts so found to be of benefit to the property, upon the several lots, blocks, tracts and parcels of land, in the proportion in which they were severally benefited by such improvement; but that no lot, block or tract of land was assessed by said Commissioners in a greater
6 amount than it was actually benefited. Said Commissioners also made an assessment roll, in which appeared the names of the owners, so far as known, and a description of each block, lot, tract or parcel of land, and the amounts assessed as benefits thereto, and in which said roll they set down as against the said city the amount they found as public benefit, and certified said assessment roll to the Common Council of such city within at least thirty days from the date of their appointment, to wit, the date hereinafter mentioned.

VIII.

That within five days after their appointment to wit, on the 8th day of December, 1903, said Commissioners met and fixed a time and place when and where they would meet to consider and decide upon such assessments, which time was not less than fifteen nor more than twenty days from the date of their appointment, to wit, the time set being the 24th day of December, 1903, at the hour of 2 p. m., in the Council Chamber of the City Hall in the said City of Tucson. That said Commissioners thereupon gave notice by mail to each owner of premises to be assessed whose name and place of residence was
7 known to them or upon diligent inquiry could be ascertained, of the time and place of their meeting as aforesaid, and especially mailed notices to the defendants herein as aforesaid, and such notice was so mailed at least ten days before such day of hearing, to wit, on the 14th day of December, 1903. Said Commissioners also caused notice to be given of such hearing by posting notices in at least four public places in said city, two of which were in the neighborhood of such improvement, to wit, one on a blackboard in front of the County Court-house of Pima County, in Tucson; one on a blackboard in the Postoffice in said city; one on a telegraph pole at the northeast corner of said improvement, to wit, at the corner of North Church and Maiden Lane Streets; one on a building on the north side of Maiden Lane Street, between Court Street and North Church Street; one on a building on the east side of Court Street, between Congress Street and Maiden Lane Street, said building being situated on Block 206; and another on a telegraph pole on the north side of Congress Street, between Court Street and Meyer Street. They also published the same at least once in a newspaper published in
8 the said city, to wit, in the Tucson Citizen, a daily newspaper published in said Tucson, on the following days: December 16, 17, 18, 19, 21, 22 and 23, in the year 1903. Said notices so pub-

lished, posted and mailed as aforesaid were substantially in the form provided in Paragraph 473 of the Revised Statutes of Arizona, and a copy thereof is hereto attached and made a part hereof and marked "Exhibit F."

IX.

That thereafter and at the time and place specified in said notices said Commissioners met, so as to permit all persons interested in any real estate affected by such special assessment an opportunity to appear and be heard before such Commissioners, with such witnesses as they might produce. That at said meeting the defendants herein appeared through their attorneys or agents, but made no objection to their assessments, nor did they produce any witnesses. That upon said hearing it did not appear to said Commissioners that any premises of defendants assessed for said improvement in the roll prepared by them were assessed more or less than they would be benefited, or more or less than the proportionate share of the cost of the improvement which such premises should justly bear, and said Commissioners did not amend or change their said assessment so far as these defendants were concerned, but certified said roll as prepared by them, and within thirty days from the date of their appointment, to wit, on the 30th day of December, 1903, to the Common Council of said city.

XII.

That upon the confirmation of such report and assessment by the Common Council as aforesaid the Recorder of the said city filed the report and assessment and recorded the action of the Council thereon, and the Mayor and Recorder thereupon issued a warrant for the collection of said special assessment and tax and delivered the same, together with a copy of the assessment roll as confirmed by the Common Council, to the officer authorized to collect the general city taxes, to wit, James Flynn, City Assessor and Tax Collector. Such warrant directed the officer aforesaid to collect said tax as provided in Chapter Two, Title II, Section 17, of the Revised Statutes of the Territory of Arizona, and gave sufficient authority to collect the assessment therein and in such copy of such assessment roll. That a true and correct copy of said warrant, together with a true and correct copy of said assessment roll, is hereto attached and made a part hereof and marked "Exhibit C."

XIII.

That said James Flynn, Tax Collector as aforesaid, having received such warrant, immediately gave notice thereof by publishing such notice in one or more newspapers in such city, to wit, in the Tucson Citizen, a daily newspaper as aforesaid, for a period of ten days, beginning with the 15th day of February, 1904. Such notice was substantially in the form provided by law and a true copy of which is hereto attached and made a part hereof and marked "Exhibit D." Said Tax Collector did, as far as practicable, call upon all persons

residing within the corporation of Tucson whose names are upon the assessment roll, of the occupants of the property assessed, and personally and by written and printed notice left at his or her place of abode, informed them of such assessment and required the payment of the same, and especially did he call upon and personally and by printed notice given inform the defendants herein mentioned
11 of such assessment and requested the payment of the same of them. Said Collector wrote the word "Paid" opposite each tract or lot upon which the assessment was paid, together with the name and postoffice address of the person making the payment, and the date of payment.

XIV.

That the said defendants, nor either of them, have not paid the said assessment so levied against them as aforesaid, nor any part or parcel thereof, but so to do have failed and refused. That the time for them to so make their payments has gone by, and they and each of them are now delinquent. That the aggregate amount of assessment upon said Lot No. 5 in Block No. 197 aforesaid is the sum of $15,533.75, all of which more fully appear from the tax bill or bills hereto attached and filed with and made a part of this complaint, fully authenticated by certificate of the Treasurer and *Ex-officio* Tax Collector within and for said county. That all of said assessment so assessed and levied as aforesaid for the purposes aforesaid, to the amounts aforesaid, and against said above described tracts of land respectively as aforesaid, became and were all and still are
12 delinquent, and together with the interest, penalties, fees, costs and charges thereon, remain due and unpaid.

XV.

That said James Flynn, Collector of special assessments aforesaid, did, not later than the 21st day of December, and on, to wit, the 21st day of December, 1904, being the year in which such assessment was made, make a report in writing to the general officer of said Pima County, authorized by the general revenue law of said Territory to sell for taxes due the County and Territory, to wit, to said John W. Bogan, of all lands, town lots and real property upon which he was unable to collect special assessments due and unpaid thereon, together with his warrant received by him authorizing the collection thereof. That said report so made by the said City Collector to the said John W. Bogan, as aforesaid, was accompanied with the oath of the said Collector that the list was a correct report and return of the lands, town lots and real property on which the special assessments levied by the authority of the City of Tucson remain due and unpaid. That he was unable to collect the same or any part thereof,
13 and that he had given the notice required by law that said warrant had been received by him for collection.

XVI.

That upon the delivery of such delinquent list to the County Collector of Taxes, John W. Bogan, as aforesaid, said County Col-

lector did deliver to said City Collector, James Flynn, his receipt for the total amount of the special assessments so delinquent, which receipt the said City Collector filed with the City Treasurer of said Tucson, and the said City Treasurer did thereupon charge the amount specified in said receipt to the said County Collector.

XVII.

That upon the receipt of said delinquent list, as aforesaid, the said County Collector, John W. Bogan, did incorporate said list with the County Delinquent List, noting in such list what property was delinquent for such special assessments, by placing the words, "City of Tucson Special Assessment," at the head of a separate column containing the said city delinquent special assessment.

14 XVIII.

That after the return of said delinquent list as aforesaid, all things required by law were done and performed, within the proper times and in the proper manner and form, and by proper officers of said county, in relation to said delinquent list and the assessment upon said real estate.

XIX.

That thereafter the then Clerk of the Board of Supervisors, as by law required, within the time required, made a Back Tax Book and complied in the making thereof with all the requirements of law; in and upon which said Back Tax Book, for the year 1904, were entered and shown as part thereof, all the lands, blocks, and lots on which taxes and City of Tucson Special Assessments were then delinquent in said county; whether said lands, blocks and lots had been forfeited to the Territory or not; and included the within described realty, to wit, Lot 5 in Block 197. Opposite each tract, block or lot in said book there appears therein the names of the owners, except when same were not known, and when not known the names of the persons to whom the respective tracts, blocks and lots
15 were last assessed, and which said Back Tax Book included the names of the defendants herein as owners of said Lot 5 in Block 197. Said Back Tax Book also contained a description of said properties, the respective years for which each respective tract, block or lot was delinquent, the amount of the City of Tucson Special Assessment, and of the original tax due each fund upon each of said respective tracts, blocks or lots, together with interest on the whole of said taxes and the special assessments due the City of Tucson at the time of making of the said Back Tax Book; and all clerk's fees then due, and the aggregate amount of taxes and City of Tucson Special Assessments, interest and clerk's fees charged against each of said several and respective tracts, blocks and lots for the year for which the same was then delinquent, to wit, for the year 1904. That the City of Tucson Special Assessment due by defendants, as heretofore alleged, and as appears upon said Back Tax Book, is set out in the foregoing schedule and tax bill hereto attached,

together with the interest on the whole of said assessments at the time of the making of said Back Tax Book; and all clerk's
16 fees due, and the aggregate amount of City of Tucson Special Assessment, interest and clerk's fees charged against said defendants and against their said lot hereinbefore described, and for the assessments on which they were then delinquent.

XX.

That upon the completion of said Back Tax Book for the year aforesaid the same was, by the Clerk of the Board of Supervisors aforesaid, delivered to the then Tax Collector as aforesaid, for the purpose of collecting the taxes and assessments therein. That thereafter the said Collector proceeded to collect the taxes and assessments contained in said Back Tax Book, as required by law, but was after due diligence unable to collect the said taxes and assessments against said described real estate; nor has the said described real estate been redeemed up to the present time from the lien of said City and Territory, which exists upon the same, as hereinafter set forth.

XXI.

That under and by virtue of the law in such case made and provided, there are due and unpaid upon the assessments so as-
17 sessed and levied, and remaining unpaid, upon the several tracts, blocks and lots hereinabove described, divers sums as penalties, interest and costs, as follows, to wit:

On City of Tucson Special Assessment, delinquent and unpaid as aforesaid, on said Lot No. 5 in Block No. 197, 12,533.75 dollars penalty and interest and fees, and 376.16 dollars costs.

All of which will more fully appear from the duly certified tax bill herewith filed. That the total amount of assessment, interest, penalties, charges and costs, delinquent, due and unpaid from the above described lot for the year aforesaid, amounts in the aggregate to the sum of 12,909.91 dollars.

XXII.

That the Territory of Arizona, for the assessment assessed and levied upon said Lot No. 5, as described herein, for the purpose above mentioned, has a first and paramount lien in favor of said Territory on said lot, to the amount of said assessment, interest, penalties, charges and costs, for the purposes herein mentioned as aforesaid.

XXIII.

That heretofore, to wit, on January 6, 1904, the aforesaid
18 John W. Bogan, Treasurer and Tax Collector of said Pima County, made an agreement in writing with, and employed, S. L. Kingan, as an attorney, to prosecute this suit and all others for delinquent taxes in said county; that said attorney is to receive as fees therefor twenty-five per centum of the amount actually collected and paid into the treasury; that said agreement was approved by the Board of Supervisors of said county, by order of record entered on

the 6th day of January, 1904; that the said per centum is to be taxed as costs in the suit and collected as other costs.

Wherefore, plaintiff, at the relation and to the use aforesaid, prays judgment for the sum of 12,909.91 dollars, the aggregate amount of the assessment, interest, penalties, charges and costs, due on said property as aforesaid, together with the costs of this suit against defendant, and that the same be declared a first and paramount lien in favor of the Territory of Arizona, and that all equities of redemption be foreclosed, and that the said lien be enforced, and said real estate, or so much thereof as may be necessary to satisfy said judgment, interest, penalties and costs of this suit, be sold, and that execution be
19 issued thereon, and for such further relief as may be just in the premises.

S. L. KINGAN,
Attorney for Plaintiff.

20 EXHIBIT A.

Ordinance No. 168.

Providing for Altering and Widening Congress Street, Between Church Street and Court, in the City of Tucson, Arizona.

Whereas, a petition has been filed with the City Recorder of the City of Tucson, signed by the owners of the majority of the lineal frontage upon Block 206 in said city, praying that proceedings be taken to condemn all private property in said Block 206, and that the land embraced therein be thrown open as a street and thoroughfare and made a part of Congress street, and that such improvement be made by special assessment; and

Whereas, it is necessary to condemn the said Block 206 and all thereof for public use for the purpose of widening and improving Congress Street between Church Street and Court Street;

Now, therefore, be it ordained by the Mayor and Common Council of the City of Tucson as follows:

SECTION 1. That Congress Street, between Church Street
21 and Court Street, in the City of Tucson, Arizona, be opened and widened so as to inclu-e all of the land now lying in Block 206 of said city, bounded on the east by Church Street, on the south by Congress Street, on the west by Court Street, and on the north by Maiden Lane.

SEC. 2. Be it further enacted that it is necessary to widen the said Congress Street between the limits above described, and to condemn the said Block 206 and all thereof, for said purpose of so widening Congress Street.

SEC. 3. That proceedings be at once instituted by the proper officers of this city for the purpose of having said premises and the improvements thereon condemned; and for making just compensation therefor to the end that the legal right and title to remove the said improvements and convert the said described lands to public use shall vest in this city.

SEC. 4. That all that part of Maiden Lane lying between Church Street on the east and Court Street on the west, and all of the premises described in Section 1, after the condemnation and removal of the improvements thereon, shall become a part of said Congress Street, for public use.

22 SEC. 5. All costs, damages and expenses incurred in carrying out the provisions of this ordinance shall be defrayed by special assessment, to be levied upon the several lots, blocks, tracts and parcels of land within this city that shall be benefited by the said improvement, in the proportion in which they will be severally benefited by such improvement.

SEC. 6. This ordinance shall be in effect from and after its passage and approval.

SEC. 7. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Passed and approved by the Mayor and Common Council of the City of Tucson this 19th day of June, A. D. 1903.

Approved June 19, 1903.

C. F. SCHUMACHER, *Mayor.*

Attest:

[SEAL.] N. E. HAWKE,
Ex Officio City Clerk, Pro Tem.

23 EXHIBIT B.

Ordinance No. 181.

Providing for the Collection of Assessments to Remove Block 206 in the City of Tucson, and for the Issuance of Bonds Therefor.

Whereas, a petition was heretofore filed with the City Recorder of the City of Tucson, signed by the owners of a majority of the lineal frontage upon Block 206 in the said city, praying that proceedings be taken to condemn all private property in said block, that the lands embraced therein be thrown open as a street, and that the improvement be made by special assessment, upon which petition the Mayor and Common Council of said city passed an ordinance, being Ordinance No. 168; and

Whereas, suit was duly instituted thereafter in the District Court of the First Judicial District, Territory of Arizona, in and for Pima County, praying the condemnation of said Block 206, and alleging the necessity for its taking, in accordance with the petition and ordinance aforesaid; and in which said action the said court entered its judgment, assessing the damages to the owners of said

24 block for its removal, in the sum of Forty-six Thousand Five Hundred Dollars ($46,500.00), and in conformity with law appointed a commission to examine the locality where the improvement was proposed to be made, and the lots, tracts and parcels of land that would be benefited thereby, and to apportion the total cost of such improvement among the several lots, blocks tracts and

parcels of land in the proportion in which they would be severally benefited by the improvement; and

Whereas, said commission did so apportion such benefits in accordance with their duties and the law in the premises, and recommended in their report that such assessments be made in installments, said recommendations being made at the request of the owners of the properties benefited; and

Whereas, each of the matters and things aforesaid was duly and legally done and performed under and by virtue of Act No. 57 of the Nineteenth Legislative Assembly of Arizona and all acts supplemental and amendatory thereto, and in accordance with the Revised Statutes of Arizona of 1901, relating to municipal improvements by special assessments and eminent domain; and

25 Whereas, the said assessment commission aforesaid having complied with all their duties and all legal requirements, and having certified their assessment roll as corrected by them to the Common Council of the said city, together with the testimony taken by them, and the said Common Council having confirmed the same, and the Recorder of the City of Tucson having filed the report and assessment roll and recorded the action of the Common Council thereon. Now, therefore,

Be it ordained by the Mayor and Common Council of the City of Tucson as follows:

SECTION 1. That the special tax or assessment levied upon contiguous and benefited property for the removal of Block 206 in the City of Tucson, be and the same shall become due in five equal annual installments, the first installment to be payable on the day of the levy, to wit, on the 15th day of February, 1904, and each of the four subsequent installments to become due in equal annual payments, and on, to wit, the fifteenth day of February of each year thereafter until the entire tax is paid. Provided, however, that the owners of any properties so assessed may, on or before thirty days from

26 the said fifteenth day of February, 1904, pay the entire amount so levied and assessed against them, and thus prevent the payment of interest on any deferred installments; but this privilege shall not be allowed from and after the said thirty days from the fifteenth day of February, 1904, aforesaid. That the deferred installments of said assessment as herein mentioned shall bear interest from and after thirty days after the said fifteenth day of February, 1904, at the rate of seven (7) per cent. per annum, payable annually. That the interest on each installment shall be due and payable at the same time as the installment is due and payable, and shall be a lien upon the property assessed to the same extent as the tax so levied, and shall be deemed and considered as a part of the tax. That a failure to pay any installment of the said tax when the same is due and payable shall make the entire tax due and payable, and proceedings shall be taken by the proper officers for the collection of the entire tax so levied and remaining unpaid, as is now or may hereafter be provided for the collection of delinquent taxes or special assessments.

SECTION 2. That the cost and expenses of the improvement for

which said special assessment was levied as aforesaid, to wit,
27 the removal of Block 206 in the said City of Tucson, shall in the first instance be paid out of moneys borrowed by the City of Tucson for the purpose; and, for the purpose of raising money to pay for such improvement in the first instance the Mayor and Common Council may issue bonds of the city in any amount necessary, not exceeding the expense and cost of such improvement. Said bonds to bear interest at the rate of seven (7) per cent. per annum, and all moneys realized from the special assessment tax aforesaid, or so charged thereafter, as may be necessary, shall be applied to the payment of the principal and interest on said bonds.

SECTION 3. That bonds of the City of Tucson to the extent of thirty thousand dollars ($30,000.00) be issued under and by virtue of *virtue of* Act No. 57, of the Nineteenth Legislative Assembly of the Territory of Arizona, and the amendments thereto of March 16, 1899, and the Revised Statutes of Arizona of 1901. Said bonds shall be in the denomination of one thousand dollars ($1,000.00) each; shall be numbered from one to thirty, both inclusive; shall be dated February 15, 1904; shall bear interest at the rate of seven (7) per cent.
28 per annum, payable annually, and shall be payable aes follows: Bonds numbered one to seven, both inclusive, shall be due one year from their date; bonds numbered eight to fourteen, both inclusive, shall be due two years from their date; bonds numbered fifteen to twenty-one, both inclusive, shall be due three years from their date; and bonds numbered twenty-two to thirty, both inclusive, shall be due four years from their date. Said bonds shall be signed by the Mayor; have the corporate seal of the city affixed, attested by the City Recorder, and shall have interest coupon or coupons attached, which shall bear the printed signatures of both the Mayor and the City Recorder. Said bonds shall be payable in lawful money of the United States and shall be in substantially the following form, to wit:

UNITED STATES OF AMERICA,
Territory of Arizona, City of Tucson:

Special Assessment Bond.

No. $1,000.00

The City of Tucson, in the County of Pima, Territory of Arizona, for value received, promises to pay to the bearer the sum of
29 One Thousand Dollars on the 15th day of February 190.., with interest at the rate of seven per cent. per annum, payable annually, on presentation and surrender respectively of this bond or of the annexed interest coupons as they severally become due, both principal and interest payable in lawful money of the United States of America, at the office of the City Treasurer in the City of Tucson, Territory of Arizona.

This bond is one of a series of thirty, of like date and amount, issued for the improvement of Congress Street in the City of Tucson, by the removal of Block No. 206, which improvement is to be paid for by special assessment of contiguous property benefited, and in

five annual installments, all done under and by virtue of a strict compliance with the laws of the Territory of Arizona, pertaining to municipal improvements by special assessments, and the payments of which installments are secured by valid liens upon the various properties benefited.

It is hereby certified, recited and declared that all acts, conditions and things required to be done, happened, and to be performed precedent to and in the issuance of this bond, have
30 been done, happened and been performed by regular and due form, as required by law, and that the amount of this bond, with all other indebtedness of the City of Tucson, does not exceed any limit prescribed by the acts of Congress of the United States of America, or of the Legislative Assembly of the Territory of Arizona.

In witness whereof, the Mayor and Common Council of the said City of Tucson have caused this bond to be signed by the Mayor of the said city and corporate seal of the said city to be affixed hereto, attested by the City Recorder, the 15th day of February, 1904.

—— ——,
Mayor.

[SEAL.]

Attest: —— ——,
City Recorder.

(*Form of Coupon.*)

No. .... $70.00.

The City of Tucson, Arizona, will pay to bearer on the 15th day of February, 190–, at the office of the City Treasurer in the City of Tucson, Territory of Arizona, Seventy Dollars in lawful money of the United States of America, being one years' interest
31 then due on its special assessment bond No. ...., dated February 15, 1904.

C. F. SCHUMACHER,
Mayor.

Attest: FRANK S. TREAT,
City Recorder.

SECTION 4. That when said bonds have been signed by the Mayor and have had the corporate seal affixed thereto, attested by the City Recorder, and the coupon or coupons have been signed by the printed signatures of the Mayor and the City Recorder, the said bonds, or so many of them as shall become necessary, shall be delivered by the City Treasurer of the said City of Tucson to any purchaser or purchasers thereof on their paying the purchase price therefor to him, which purchase price must in no event be less than par, and all bonds which are not so sold and delivered by the said City Treasurer shall be by him destroyed.

SECTION 5. The proceeds of the sale of said bonds shall be used solely for the purpose of paying the damages and compensation

awarded by the said District Court to the owners of Block
32 206 in said city, for its removal as aforesaid, and for no other purpose whatsoever.

SECTION 6. The Mayor and Common Council of the City of Tucson are hereby required and directed to enforce the payments of said installments of the special assessment aforesaid, and to take all appropriate and necessary action in the premises to maintain and enforce the liens on the properties benefited by the said improvement; and all moneys collected by reason of said special assessment are to be paid into and become a part of a Special Assessment Fund, and shall be used for no other purpose than the payment for said improvement and the principal and interest due upon said bonds.

SECTION 7. Be it further ordained that the Mayor and City Recorder shall issue a warrant for the collection of said special assessment and tax, of date the 15th day of February, 1904, and confirmed by the Common Council, to the officer authorized to collect the general city taxes, such warrant to direct the officer aforesaid to collect said tax as in this ordinance and the said acts of the Legislative Assembly provided, and give sufficient authority to collect the assessment therein and in such copy of said tax
33 roll specified, and in installments, in accordance with the provisions of this ordinance. Said warrant to authorize such officer to notify all persons to call and pay the amounts assessed, at his office, within thirty days from the date thereof.

SECTION 8. All ordinances and resolutions of the City of Tucson, so far as they are in conflict with this ordinance, are hereby repealed.

Passed and adopted by the Common Council of the City of Tucson this 13th day of February, 1904.

[SEAL.] C. F. SCHUMACHER, *Mayor.*

Attest:

FRANK S. TREAT,
Recorder and Ex-officio City Clerk.

34 EXHIBIT C.

Warrant for the Collection of Special Assessment and Taxes.

To James Flynn, Esq., Collector of Taxes in and for the City of Tucson, Pima County, Arizona, Greeting:

You are hereby authorized and directed according to law and the ordinances of the City of Tucson, particularly Ordinance No. 168, entitled, "Providing for Widening Congress Street Between Church Street and Court Street, in the City of Tucson, Arizona, by the Removal of Block No. 206," which said ordinance was passed and adopted and duly approved on the 19th day of June, 1903, to collect within thirty days from the date of receipt of this warrant by you, in manner and form as hereinafter specified, all and singular, the special assessment and taxes levied against all and singular those parcels of land, with the improvements thereon, to be benefited by the widening of Congress Street, as contemplated by said ordinance, all of

which said properties are respectively set forth, designate- and
35 described, together with the names of the owners thereof, in the amended and modified assessm-nt roll of the Special Assessment Committee appointed by the District Court of the First Judicial District, Territory of Arizona, in and for Pima County, filed December 5, 1903, and adopted by the Mayor and Common Council of the City of Tucson, December 30, 1903, a copy of which said amended assessment roll, as confirmed by the Common Council, is herewith delivered.

You will therefore proceed forthwith, according to law and the said ordinances, to make collection of the said special assessments and taxes, and as hereinafter particularly described, and all moneys so collected by you, you will at once pay over to the Treasurer of the City of Tucson, taking the receipt of the said Treasurer therefor. You will make all and singular of the said collections as hereinafter specified, so far as possible, within thirty days from the date of receipt by you of this Warrant, and in case you shall fail to collect any of the said special assessments so assessed and levied, you will report the same to the Mayor and Common Council of the City of Tucson
36 at the expiration of thirty days of the receipt by you of this Warrant.

You will further take notice that the said special assessments are to become due and payable in five equal annual installments, the first installment to be due and payable within thirty days from the date of this Warrant as aforesaid; the balance of the installments to become due and payable in five equal annual installments each year thereafter, and as provided in Ordinance No. 181 of the said City of Tucson, passed and adopted on the 13th day of February, 1904. Deferred installments are to bear seven (7) per cent. interest, which you will also collect at the time and dates as they become due.

You are further notified that within thirty days from the date of these presents any party assessed may pay the entire amount of his assessment, and thus be relieved from paying the annual installments and interest thereon. From and after the thirty days from the date of this warrant you will not extend the privilege of paying the entire assessment to any one, but their said assessments must be paid in installments, as herein provided.

Hereof fail not.

Done in the City of Tucson this 15th day of February, 1904.

37 C. F. SCHUMACHER, *Mayor.*

Attest: FRANK S. TREAT,
Recorder and Ex Officio City Clerk.

Modified and Corrected Assessment Roll, Account of Removal of Block No. 206.

Owner.	Lot.	Block.	Amount.
A. R. English	5	197	$12,533.75
C. F. Schumacher	4	197	4,999.50
B. Hattich	3	197	6,103.00
E. Lonergan	1	211	1,683.00
Frank Mason	part of 1	210	1,027.50
Jacome & Manzo	1 and 2	210	1,537.50
Ezra Bartlett	3	210	1,152.00
Griselda Crandall	4, 5, 6	210	3,317.75
M. W. Morrison	9, 9	210	850.00
P. Charaleau	7	210	1,960.00
O. J. Nave	1	197	900.00
Louisa M. Matas	2	197	700.00
W. C. Davis	2	211	150.00
R. G. Brady	3	211	850.00
Matilda Zeckendorf	1	198	600.00
John Scolari	2, 6	198	1,200.00
F. Morales	3, 4	198	500.00
38 Anne M. Neal	5	198	200.00
Eva Mansfield	1	205	600.00
A. Durazo	2	205	400.00
Sroufe & McCrum	11	199	1,000.00
Chas. Lezinsky	10	199	600.00
R. E. Leon	9	199	400.00
Alex. Craig	10	193	66.00
Emile L. Bowers	7	196	23.00
H. Wright	11	196	26.00
Star Pub. Co	8, 9	196	55.35
W. E. Murphy	10	196	57.45
H. Granjon	3	209	122.43
Bernabe Robles	4	209	24.65
S. Otero	5	209	40.00
Tucson Gas & E. Light Co.	6	193	46.00
O. M. Anderson	1	214	125.00
N. H. Matas	8, 10, 12	214	147.50
Pauline Darms	3	214	38.00
Julius Flin	4	214	60.00
Paul Abadie & Co	5	214	170.00
P. Charleau	6	215	65.00
Pima County	3, 4	192	500.00
The Elks	1	191	120.00
Wm. Herring	5	191	150.00
T. G. Fitch	2	191	75.00
Wm. Ried	3, 4	191	102.00
L. J. Sanford	5	190	135.00
Corbett Bros	1, 2, 3, 4	190	175.00
39 Tucson Natatorium.	1	199	72.00
Geo. Goodfellow	2, 14	199	65.00

Owner.	Lot.	Block.	Amount.
Henry Madsen	3	199	25.00
Saly Eber	4, 5, 6, 7, 8, 12, 13	199	144.00
Geo. Goodfellow	1, 2, 3, 4	200	30.00
G. Florsheim	1	202	40.00
E. Mansfield	1	202	40.00
E. Lonergan	1	204	200.00
W. J. Corbett	2, 4	204	132.00
Saly Eber	6	204	18.00
Cons. National Bank	3	204	15.00
T. G. Fitch	5, 7	204	23.80
H. Menager	1	213	25.00
Lillie Devant	2	213	22.50
Elvira Carillo	3	213	25.00
Maish, Driscoll & Co	5	213	117.50
E. Rochester	11	213	15.00
Pedro Charaleau	1	212	313.00
Lillie Devant	2	212	50.00
City of Tucson	At large		1.00
			$46,970.88

JOHN W. BOGAN,
JAMES FLYNN,
H. H. PILLING.

40 EXHIBIT D.

Special Assessment Notice.

Notice is hereby given that the Common Council of the City of Tucson, in Pima County, Territory of Arizona, have levied and assessed a special assessment on the property benefited by the following improvements, namely: The altering and widening of Congress Street between Church Street and Court Street, in said City of Tucson, by the removal of Block 206, as will more fully appear from the assessment roll for such special assessment on file in the office of the City Recorder of said city; and a warrant for the collection of such assessment is now in the hands of the undersigned. All persons interested are hereby notified to call and pay the amounts assessed, at the Collector's office in the City Hall, at the corner of Court and Library Streets, in the City of Tucson, within thirty days from date hereof. The amounts assessed against parties interested are due in five annual installments of equal amounts each, deferred installments to bear interest at the rate of seven (7) per cent. per annum. All parties interested are at liberty, within the
41 thirty days herein specified, to pay the total amount of the assessments against them and thus avoid interest on deferred installments. This privilege is not to be granted from and after the said thirty days. The failure to pay any installment of said assessment when due shall make the entire assessment payable.

Dated this 15th day of February, 1904.

JAMES FLYNN, *Collector.*

42 EXHIBIT F.

Special Assessment Notice.

Notice is hereby given to all persons interested that the Common Council of the City of Tucson, in Pima County, Arizona Territory, having ordered that Congress Street between Court Street and Church Street, in said City of Tucson, be opened and widened so as to include all of the land now lying in Block 206 of said city, bounded on the east by Church Street, on the south by Congress Street, on the west by Court Street, and on the north by Maiden Lane, and the District Court of the First Judicial District of the Territory of Arizona, in and for the County of Pima, having appointed the undersigned committee to examine and report upon such improvement, and to make an assessment of the costs of such improvement, according to the benefits upon the property contiguous thereto, a hearing will be had by said committee of all persons interested in said improvement and the land to be effected by the special assessment therefor, at the City Hall in the City of Tucson, on the 24th day of December, 1903, at 2 o'clock p. m.
43 All persons desiring may then and there appear and make any objections they may have to such improvement and assessment.

JOHN BOGAN,
H. H. PILLING,
JAMES FLYNN,
Committee.

Back Taxes.

Tax Bill of Back Taxes, Pima County, Arizona.

Lot and improvements, Lot No. 5, Block No. 197, in Tucson, Arizona, assessed to Allen B. English, special assessment, removal of Block No. 206, $12,533.75; clerk's fees, $0.15; interest, $376.01; total of $12,909.91.

TERRITORY OF ARIZONA, *County of Pima, ss:*

I, John W. Borgan, Treasurer and *Ex-officio* Tax Collector of Pima County, Arizona, do hereby certify that the above Tax Bill of Back Taxes, and every item thereof, is correct and unpaid, as shown by the records of my office.

JOHN W. BOGAN,
Treasurer and ex-Officio Tax Collector of Pima County, Arizona.

Dated February 20, 1905.

44 *Answer.*

(Title.)

The defendants for their answer to the complaint in the above entitled action:

I.

Allege that the improvements and special assessments set forth and alleged in the complaint herein were each and all made, had and done, by virtue of, and in pretended pursuance of the provisions of Chapter 2, Title 11, of the Revised Statutes of Arizona, of the year 1901.

II.

That it is provided in and by the terms of Section 495 of said Revised Statutes, being a part of said Chapter 2, Title 11, that at any time after the assessment therein provided for became due it shall and may be legal for the City Collector, if so required by the Mayor and Common Council of said city, to commence suit in a court of record in the corporate name of such city, against any person or persons for the total amount of special assessment for which such person or persons are liable, as well as for the foreclosure of such special assessment tax lien. That in pursuance of said Section 495 the City of Tucson, by its Mayor and Common Council, did
45 require the City Collector of such city to commence suit in the District Court of Pima County, in the corporate name of such city, against all persons who did not pay, and who were assumed to be liable for the payment of the special assessment set forth and alleged in the complaint herein, and for the foreclosure of the alleged tax lien for and on account of such alleged special assessment, and that in pursuance of the provisions of said Section 495, and prior to the commencement of this action, the City Collector of the City of Tucson commenced an action in the District Court of Pima County, in the Territory of Arizona, against these defendants and others, in the corporate name of the City of Tucson, to recover the alleged special assessment set forth and described in the complaint herein, and to foreclose the pretended tax lien alleged in the complaint herein, and that said prior action so commenced by the said City of Tucson against these defendants and others was and is, as to these defendants, for the same cause of action as that in the complaint herein stated and alleged. That said action was so commenced long prior to the commencement of this action
46 and that said action was at the time of the commencement of this action, and is now so pending in said court.

W. P. MILLER,
Attorney for Defendants.

TERRITORY OF ARIZONA, *County of Cochise, ss:*

Allen R. English and Honora English, being severally and duly sworn, say that they are the defendants in the above entitled action,

that they have read the foregoing plea and know the contents thereof, and that the same is true in substance and in fact.

ALLEN R. ENGLISH.
HONORA ENGLISH.

Sworn and subscribed to before me this 25th day of April, 1905.

[SEAL.] W. P. MILLER,
Notary Public.

My commission expires May 13, 1907.

The said defendants further answering said complaint allege:

I.

That there was at the commencement of this action, and still is, another action pending in said court between the same parties
47 and for the same cause of action as that for the complaint herein stated and alleged.

W. P. MILLER,
Attorney for Defendants.

TERRITORY OF ARIZONA, *County of Cochise, ss:*

Allen R. English and Honora English, being severally duly sworn, say that they are the defendants in the above entitled action, that they have read the foregoing plea, and know the contents thereof, and that the same is true in substance and in fact.

ALLEN R. ENGLISH.
HONORA ENGLISH.

Subscribed and sworn to before me this 25th day of April, A. D. 1905.

[SEAL.] W. P. MILLER,
Notary Public.

My commission expires May 13, 1907.

The said defendants, without waiving the aforesaid pleas, and for further answer to said complaint:

I.

Deny that before the ordinance referred to in the complaint herein as Ordinance No. 168 was passed by the Mayor and
48 Common Council of the City of Tucson, or at any time, a petition for the making of the improvements ordered made by said ordinance was signed by the owners of a majority of the lineal frontage upon the improvements in said ordinance provided for, and deny that any such petition was filed with the City Recorder of said City of Tucson; and in that regard these defendants allege, upon information and belief, that the only petition that was ever before the Mayor and Common Council of Tucson, or which was ever filed with the City Recorder of Tucson, as to the improvements in question, was a certain petition signed by certain persons repre-

senting themselves to be a majority of the owners of property abutting upon Block 206, referred to and named in said ordinance, and that said petition in fact was not signed by the owners of a majority of the lineal frontage upon such improvements as that described in and referred to in said ordinance, and that the petition referred to in said ordinance was filed on the 8th day of April, 1901, in other proceedings, and that when thus filed it was not signed by the owners of a majority of the lineal frontage upon the improvements herein involved. That on the 19th day of June,
49 1903, and at the meeting of the Mayor and Common Council of the City of Tucson, at which the said ordinance referred to in the complaint was passed, said petition, which was then *functus officio,* was used as a basis for the said Ordinance No. 168.

II.

Admit that after the passage of said Ordinance No. 168 suit was commenced in the named court by the City of Tucson as plaintiff and Lizzie J. Woods and others as defendants, and that said suit is numbered 3409, but deny that in such action the matters and things alleged in Paragraphs 3 and 4 of the complaint herein were adjudged as true. Admit that in said action said court entered an order of condemnation and that in said action the court decreed damages for the taking of private property therein involved, in the sum of $46,500; and in that behalf allege that the damages so awarded were not ascertained by evidence, but were stipulated between counsel for the City of Tucson and the owners of the property sought to be condemned in said action. That these defendants were never heard and never had the opportunity to be heard upon the question of the value of the property in said action con-
50 demned for public use, and were not in any way or manner made parties to that action, and that as to these defendants, the said award of damages was, and is, in all things, illegal, null and void.

III.

Admit the filing of the supplemental petition referred to in Paragraph VII of the complaint herein, and that one of the commissioners appointed by the court upon said supplemental petition was the City Assessor of the City of Tucson.

IV.

Deny that the commissioners appointed by said court, and upon said supplemental petition, examined the locality where the said improvements were proposed to be made, and lots, blocks, tracts and parcels of land that should be benefited thereby, and deny that said commissioners estimated what proportion of the total cost of such improvements would be of benefit to the public, and what proportion thereof would be of benefit to the property to be benefited. Deny that said commission proportioned the same between the city

and such property so that each had its relative equitable
51 proportion, and deny that said commission ever found or attempted to find what proportion of the cost of said improvements would be of benefit to property against which the same was to be assessed. Deny that said commission ever made any assessment whatever with reference to the benefit which the property to be assessed would receive on account of said improvement; and in that behalf these defendants allege that said commission was never appointed to estimate the cost of making said improvements, but that upon the contrary said commission was appointed to make an assessment for the purpose of raising the amount necessary to pay the compensation and damages which had been awarded to pay for property taken for public use, together with the cost of the condemnation proceedings, including the estimated cost of making and collecting such assessment; and, in that behalf, these defendants allege that the said commissioners so appointed by said court never ascertained or inquired into the then present market value of the property to be assessed for such damages and costs, and never inquired into the increased value, if any, or the estimated increased value, if any, of the improvement provided for in said Ordi-
52 nance No. 168 to properties abutting upon said improvement or any part thereof. That said commissioners never made any inquiry or took any evidence with regard to the benefit to accrue to the property to be so assessed, and which was thereafter pretended to be assessed, for and on account of said improvements, but that upon the contrary, and on or about the 15th day of December, 1903, and without reference to the several tracts or parcels of land or any of the same which were thereafter pretended to be assessed by said commission, for the improvements referred to in said ordinance, or otherwise, and without regard to any benefit thereto, said commissioners so appointed by said court arbitrarily agreed that the north side of Maiden Lane between Court and Church Streets, in the City of Tucson, and the property abutting thereon, should bear fifty per cent. of the entire cost of improvement, and that the south side of Congress Street, between Court and Church Streets, should bear twenty-five per cent. of the entire assessment and the cost of said contemplated improvement, and that adjacent property benefited, including the city at large, if any, should bear the balance; that the Clerk of said Board
53 of Commissioners was then and there, by said commissioners, instructed to prepare an assessment roll and to make an assessment at an arbitrary rate per lineal foot upon contiguous property, to wit, at the rate of seventy-five dollars per lineal foot. And these defendants further allege upon information and belief that the amounts of alleged benefit for which the several tracts of land were by said commission so assessed, including the lands of these defendants, were solely determined by a mathematical computation made by said Clerk as to the amount per lineal foot which it would take to pay the cost of the entire improvement, and not otherwise. That such assessment roll was the only assessment roll that was ever made by the commissioners appointed by said court,

and is the assessment roll referred to in the complaint herein. And these defendants further allege that after purporting to assess the several tracts of land involved in these proceedings, and finding that the total estimated cost of the condemnation proceedings, and otherwise, was not covered by the assessment already made to the tracts of land described in the complaint, said commissioners added the sum of one dollar thereto as the estimated benefit to the City of Tucson, simply in order to compute and aggregate
54 the entire cost, not only of said condemnation proceedings, but of said proposed improvement, and in that behalf these defendants allege that said commissioners so appointed by this court, in violation of the order of this court, and without any legal right or authority so to do, assessed the property described in the complaint herein, being the property of these defendants, together with other property, not only for the amount of the damages and costs in said condemnation proceedings, but also with the estimated cost of the actual making of the improvement referred to in said Ordinance No. 168, in the matter of labor and materials in making such improvement, including the removing of buildings and obstructions lying between said Congress Street and said Maiden Lane, and in that behalf these defendants allege and insist that the action of said commissioners in assessing, and including in such assessment, the estimated cost of making the improvement contemplated by the ordnance in question, outside of and forming no part of the costs and damages of said condemnation proceedings, and of making said assessment, was and is, in all things, null and void.

55 V.

Admit that on the 8th day of December, 1903, the said commissioners appointed by said court made and fixed a time and place when and where they would meet to consider and decide upon such assessment, and that they fixed as such time and place the 24th day of December, 1903, at the hour of two o'clock p. m., in the Council Chamber of the City Hall in the City of Tucson; but in that behalf these defendants allege that on the 24th day of December, 1903, and for a long time prior thereto, the defendant, Allen R. English, was away from the Territory of Arizona and was unable to familiarize himself with the proceedings of said court, and of said commissioners, and did not have actual or constructive knowledge or notice of the proceedings had up to such time by said Board of Commissioners.

VI.

Deny that they have any knowledge or information sufficient to form a belief as to whether or not the commissioners gave the several notices in way or manner as alleged in said complaint or otherwise, and therefore deny the same.

56 VII.

Admit that the said commissioners thereafter met for the purported purpose of permitting persons interested to be heard before

such commissioners, and admit that at such time the defendants herein were represented by an attorney, but deny the allegation of the complaint that at said hearing these defendants made no objection to their assessment, but upon the contrary allege that their attorney did at said hearing protest against said assessment. And these defendants allege that at said hearing several parties protested and objected that their properties were assessed more than they were benefited, and that despite such protests the said commissioners gave no opportunity whatever for the persons so making objection, or any of them, to produce any witnesses or to be heard further as to their said protests, and that said commissioners did nothing but make record of said objections, and that at no time and at no place was there any opportunity ever given for a hearing, or for an examination by parties interested in the matter of said assessment, and that said commissioners did not at any time, in any way or in any manner, consider said objections, or inquire into such
57 objections so made; or determine such objections so made, or take any evidence with regard to such objections, or call for any evidence with regard to such objections, and that upon the contrary the said commissioners in every instance and with respect to all property contained upon said assessment roll, arbitrarily adhered to the said mathematical, arbitrary and purported assessment made as hereinbefore stated.

VIII.

Admit that said purported assessment roll so made was certified by said commissioners and filed with the Common Council of the City of Tucson, on the 30th day of December, 1903, together with a report of said commissioners thereon. Allege that on the 30th day of December, 1903, at the meeting of said Council, the said Mayor and Common Council, without considering any of the objections made to said assessment, and without giving any opportunity to be heard with reference to said assessment, or the confirmation thereof, and without notice to these defendants or any other persons, of the time or place when such assessment was to be considered for
58 confirmation, and without notice to these defendants or any other person of any proposed confirmation, and without any authority in law to make such confirmation, proceeded to, and did, by vote of said Council and Mayor, purport to confirm the said purported assessment roll, in manner and form as the same was returned by said commissioners to said City Council, and did not find, or attempt to find, inquire into or pretend to inquire into, the justice or injustice, the legality or illegality, of the said assessment roll. That the said meeting of said Council was a special meeting, and that said purported confirmation of said purported assessment roll was and is, in all things, illegal, null and void.

IX.

Deny that the purported assessment alleged in the complaint was or is a valid tax or a valid lien against the property of the defendants, or of any other person against whom said purported assessments were made.

X.

Admit that these defendants did not within twenty days
59 after the day of such purported confirmation of said assessment roll by the City Council, appeal to said District Court, and in that regard these defendants allege that no appeal was or is provided by law, from such purported determination and confirmation by such City Council; that said City Council was without power or authority to make such determination or confirmation, and that such determination and confirmation so purported to be made by said City Council was illegal, null and void. That no notice was ever given or received by these defendants of the determination or confirmation purported to be made by said Council. That no time was fixed by law when said Council should make such purported determination or confirmation, and that in any event the statute requiring an appeal from a proper determination or confirmation by a City Council, of such matters, is null and void in that the same is unreasonable, as requiring an appeal to be taken within an unreasonable time, to wit, twenty days, in the absence of any provisions of law giving to parties aggrieved, or otherwise, any notice whatever of the action or determination of the Council as to
60 the confirmation of an assessment, or as to when such confirmation would be or had been made.

XI.

Admit that these defendants have not paid the said purported assessment so levied against them, or any part thereof, and, in that behalf, these defendants allege that the said purported assessments against these defendants and against the property owned by these defendants, is, in all things, illegal, null and void.

XII.

Deny that they have any knowledge or information sufficient to form a belief as to the matters alleged in Paragraphs XV, XVI, XVII, XVIII, XIX and XX in the complaint herein, and therefore deny each and all of the same.

XIII.

Deny that there is any sum whatever due from these defendants, either to the City of Tucson or to the Territory of Arizona, for and on account of the assessment referred to in the complaint herein, or otherwise.

61 XIV.

Deny that the Territory of Arizona has any lien whatever against the property of these defendants, or any of the same, for or on account of the assessment referred to in the complaint herein, or otherwise.

XV.

Allege upon information and belief that the improvements referred to in the complaint, and involved in this action, were made without the appointment by the City Council of three of its members, or other persons, to make an examination of the premises to be affected, and to make an estimation of the cost of the improvement contemplated by the said Ordinance No. 168.

XVI.

Allege that no committee appointed by said Common Council for such purpose ever examined the premises to be affected by said improvements, or made an estimate of the costs of said improvements, including labor, materials, and other expenses attending the same, or of the cost of making and levying the assessment, or other-
62 wise, and that no such committee ever made a report of any such matters, and that no such report was ever made or approved as that required by Sections 7 and 8 of Act No. 57 of the Nineteenth Assembly of the Territory of Arizona. That no such committee ever made or caused to be made any assessment roll whatever as provided by Section 9 of the act last named, or otherwise, and that no such committee ever did any of the things required by Sections 7, 8 and 9 of said act; that no such committee was ever appointed and no such committee ever acted or purported to act in the premises; that no hearing was ever given interested persons by such committee, or otherwise; that no such committee ever made the assessment roll, or purported assessment roll, referred to in the complaint herein; that no such committee ever presented such assessment roll or purported assessment roll to the City Council, or otherwise; that said Common Council never proceeded to examine or reject, confirm or modify, such an assessment roll, or such a purported assessment roll. That every act and proceeding in the matter of the purported assessment roll
63 referred to in the complaint herein, and in the making and confirmation thereof, was and is, in all things, illegal, null and void.

XVII.

Allege, as to the purported assessment roll which was made by said court commissioners, that said purported assessment was not only made without any reference to the proportion of benefit to the several properties purported to be assessed, but that in addition to the arbitrary and mathematical assessment hereinbefore referred to, the said court commissioners included as a part of the assessment of the property of these defendants the alleged value to these defendants of a portion of the public highway then existing in the City of Tucson, and known as "Maiden Lane," which adjoins the property of these defendants, and which was not included in Congress Street as altered and widened in the course of the improvements actually made, and which are involved herein, which the said City of Tucson proposed to deed to these defendants upon the payment of the
64 said purported assessment against them, and that the said City of Tucson has in every way, and with full knowledge,

approved of the said purported assessment, and has offered to give to parties assessed who shall pay such purported and illegal assessment, including these defendants, deeds for property constituting a part of said highway, all without right or authority of law, and in derogation of the property rights of these defendants, and to defendants' great damage.

XVIII.

That if the said purported assessment against the property of these defendants shall be held legal and valid, and to constitute a tax and lien against the property of these defendants because of their failure to appeal from the said action of the City Council, such holding will be in violation of the Fourteenth Amendment to the Constitution of the United States, which provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." That these defendants are citizens of the United States and that the Territory of Arizona is attempting in and by this action to deprive these defendants of their property without due process of law, all in violation and contravention of the provisions of the said Fourteenth Amendment to the Constitution of the United States.

Wherefore, these defendants pray that they may be dismissed hence; that the complaint of the plaintiff be dismissed, and that these defendants have judgment for their costs and disbursements herein, and for such other and further relief as to the Court shall seem meet and just.

W. P. MILLER,
Attorney for Defendants.

TERRITORY OF ARIZONA, *County of Cochise, ss:*

Allen R. English, being by me first duly sworn, says that he is one of the defendants in the above entitled action, that he has read the foregoing answer and knows the contents thereto, and that the same is true of his own knowledge, except as to those matters therein alleged upon information and belief, and that as to those matters he believes it to be true.

ALLEN R. ENGLISH.

Subscribed and sworn to before me this 25th day of April, A. D. 1905.

[SEAL.] W. P. MILLER,
Notary Public.

My commission expires May 13, 1907.

(Title of Cause.)

Now comes the plaintiff herein, and by way of reply to the answer of A. R. English and Honora English heretofore filed, says: That the defendants ought not to be permitted or allowed to plead or deny that before the ordinance referred to in the complaint herein as

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Ordinance No. 168 was passed by the Mayor and Common Council of the City of Tucson, or at any time, a petition for the making of the improvements ordered made by said ordinance was signed by the owners of a majority of the lineal frontage upon the improvements ordered made by said ordinance was signed by the owners of a majority of the lineal frontage upon the improvements in said ordinance provided for, nor should they be permitted or allowed to deny or plead that any such petition was filed with the City Recorder of said City of Tucson, nor to set up or deny any of the matters
67 contained in Paragraph I of defendants' said answer filed herein, beginning on page 3 of their said answer, and ending on page 4 thereof, because the plaintiff says, that prior to the 19th day of June, 1903, the defendant, Allen R. English, did sign, as owner of Lot No. 5, in Block No. 197, of said City of Tucson, the said lot being a part of the lineal frontage facing said Block No. 206, by his duly appointed and constituted Attorney in Fact, Rochester Ford, a petition for the making of the improvement, to wit, the removal of Block No. 206 in the City of Tucson, all as set out in plaintiff's complaint herein, wherein said Allen R. English did pray and petition the Mayor and Common Council of the City of Tucson, to pass an ordinance for the removal of all property situate upon the said Block 206, and for the widening of Congress Street thereon, and that said petition so signed by the said Allen R. English was filed with the City Recorder of the said City of Tucson, all as set forth in said ordinance, and as alleged in plaintiff's complaint herein. That thereafter, on June 19, 1903, the said Mayor and Common Council, acting upon said petition, did pass Ordinance No. 168, providing for altering and widening Congress Street between Church Street
68 and Court Street in said City of Tucson, Arizona, all as set out in plaintiff's complaint herein. That thereafter the City of Tucson, acting upon said petition so signed by defendant English, and said Ordinance No. 168, did institute in the above entitled court an action, in which said suit Lizzie J. Woods and others, owners of said Block No. 206, were defendants, and which said suit was numbered 3409, and which said suit was duly tried by this Honorable Court, and in which suit it was found and adjudged and decreed that on the 19th day of June, 1903, the Mayor and Common Council of Tucson passed an ordinance entitled "Ordinance No. 168, Providing for Altering and Widening of Congress Street Between Church Street and Court Street in the City of Tucson, Arizona," and which said ordinance provided for the removal of said Block 206, and that before said ordinance was passed a petition for the making of the improvement therein ordered made, to wit, the widening of Congress Street and condemnation of property rights in said Block 206, all as aforesaid, was signed by the owners of a majority of the lineal frontage upon the improvement in said ordinance contemplated, and was filed with the City Recorder of said City
69 of Tucson, all as set forth in said Ordinance No. 168. That the said Allen R. English was a party to said action, although not a party of record in this: That said action, although brought in the name of the City of Tucson, was brought for his benefit as well as for all other petitioners who had signed said petition as aforesaid, and that he had a direct interest in said suit and in the judgment

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therein rendered. That the plaintiff herein, although not a party to said suit of record, is a privy to the said City of Tucson as plaintiff in said action, and that this plaintiff is now pursuing and maintaining this action for the benefit of the said City of Tucson, the plaintiff in said action. That said judgment in said action No. 3409 was not appealed from, and became, and was, and is, a final judgment in said action. That the time for appeal or writ of error from said judgment has long since expired. That the defendant herein, the said Allen R. English, well knew that said action was pending, and did not intervene, nor made any appearance therein. And this the plaintiff is ready to verify.

Wherefore, plaintiff prays judgment that defendant be estopped to deny that a petition signed by the owners of a majority
70 of the lineal frontage upon said Block No. 206 was filed with the City Recorder in said City of Tucson, as set forth in said ordinance and in plaintiff's complaint herein, and that he be estopped from denying or setting up any of the matters contained in said Paragraph I of defendants' answer herein filed, and that all of said Paragraph I be ordered stricken out.

S. L. KINGAN,
Attorney for Plaintiff.

And for a further answer and reply to defendants' answer filed herein, plaintiff moves the Court to strike from defendants' said answer all that portion of Paragraph II, beginning on line No. 2, with the words, to wit: "And in that behalf allege," and ending with the words: "In all things illegal, null and void," on line No. 11 of said Paragraph II; and also all of Paragraph IV of defendants' said answer; and also all that part of Paragraph V of defendants' said answer, beginning with the words: "But in that behalf these defendants allege," on line No. 6 of said Paragraph V, and ending with the words: "And of said commissioners," on line No. 11 of said Paragraph V; and also all that part of Para-
71 graph VII of defendants' said answer, beginning with the words: "And these defendants allege," on line No. 7 of said Paragraph VII, and ending with the words: "Assessment made as hereinbefore stated," on line No. 25 of said Paragraph VII, being all of the remainder of said paragraph; and also all that part of Paragraph VIII of defendants' answer, beginning with the words: "Allege that on the 30th day of December," on line No. 4 of said Paragraph VIII, and ending with the words: "In all things illegal, null and void," of said Paragraph VIII on page 10 of defendants' said answer, being all of the remainder of said Paragraph VIII; and also all that part of Paragraph X, beginning with the words: "That no notice was ever given or received," being the second line from the top of the page of page 11 of defendants' said answer, and ending with the words: "purported determination or confirmation," being on the fifth line of said Paragraph X from the top of said page 11 of defendants' said answer; and also all of Paragraph XV of defendants' said answer; and also all of Paragraph XVI of defendants' said answer; and also all of Paragraph XVII of defend-

ants' said answer; all on the ground that all of the matters
72 therein contained, that is to say, all the allegations contained in those parts of defendants' said answer which are herein mentioned, are irrelevant, and not matter of defense in this:

That it appears from defendants' said answer that no appeal was taken by the said defendants from the action of the Common Council of the City of Tucson, Arizona, in confirming the assessment upon defendants' said property as described in plaintiff's complaint herein, and further that all said matters of defense set up in said defendants'. answer touching the validity of the said assessment might have been interposed in the proceedings for the making of said assessment, or the application for the confirmation thereof, and further that it appears from defendants' said answer that defendant, through his attorneys, was present at the hearing at two o'clock p. m., December 24, 1903, in the Council Chamber at the City Hall, in the City of Tucson, Arizona, where the said committee met to consider and decide upon the various assessments, and the assessment of defendant herein in particular.

S. L. KINGAN,
Attorney for Plaintiff.

Further answering, plaintiff demurs to the answer of de-
73 fendant herein, on the ground that said answer does not contain facts sufficient to constitute a defense of said action.

S. L. KINGAN,
Attorney for Plaintiff.

And further answering by way of reply, the said plaintiff alleges that the defendants, Allen R. English and Honora English, were anxious and willing that the removal of said Block No. 206, in plaintiff's complaint described, should be made, and their property in said complaint described improved thereby. That by Power of Attorney, duly executed and acknowledged, the said Allen R. English empowered one Rochester Ford, now deceased, to sign the petition for such improvement for him as his attorney in fact. That the said Allen R. English, by his attorneys, Hereford & Hazzard, and Charles Bowman, appeared before said assessment committee on said 24th of December, 1903, at their meeting held for the purpose of considering assessments on property benefited, and particularly for the purpose of considering the assessment upon defendants' property described in plaintiff's complaint herein, and merely entered a protest against the said assessment on said defendants' prop-
74 erty, without stating any reason why the said assessment was unjust, or unlawful, but did expressly state that the said protest was made for the sole purpose of saving the question of review, and further stated that the said Allen R. English did not wish to intimate that he had any objections, but wanted to save his right to it in case he should have. That the said Allen R. English and his attorneys were well acquainted with the entire proceedings from the beginning to end, and were well acquainted with the provisions of Ordinance No. 181, which is made a part of the complaint in this action. That the said English used his utmost endeavor to raise money to pay his said assessment. That he interested himself in the

sale of the bonds provided for by said ordinance, and which had been duly issued under the terms of the said ordinance, and assisted said plaintiff in disposing of the same. That he was solicitous for the removal of said Block 206; that the said removal would vastly benefit, and did vastly benefit his property, and that in all ways he recognized and aided the city in the improvement contemplated in the matters and things necessary to its consummation. That the said Allen R. English was present in the City of Tucson on
75 several occasions before the removal of said Block 206, and knew of each and everything that the City was doing to remove the same, and aided and assisted the City in every way. That during all of said times, and up to the time of the complaint filed in this action, said Allen R. English made no objection whatsoever to the assessment levied against him, nor to the improvement as proposed. That it would be manifestly unjust and inequitable to allow the said defendants after the said improvement has been made, and the said defendants' property has vastly increased in value by reason of said improvement, to be exempted from the payment of their said assessment, and as prayed in their answer; that the bonds as provided for by said Ordinance No. 181 was sold by said City of Tucson, for the purpose of raising money for said improvement, to the extent that Twenty-six Thousand ($26,000.00) Dollars was raised, and that said bonds are now outstanding and owing by said City of Tucson, and that a large part of the proceeds of said bonds went to pay the assessment made against defendants, and which defendants had failed and refused to pay; that said bonds were so purchased and accepted by the purchasers thereof, because the said defend-
76 ants had not appealed within twenty (20) days from the findings of said assessment committee, and the confirmation thereof by the Mayor and Common Council of said City of Tucson, all as aforesaid, and as alleged in plaintiff's complaint herein, and because the said defendants made no objection to any of said proceedings, and represented that they would pay said assessment.

Wherefore, plaintiff prays judgment.

S. L. KINGAN,
Attorney for Plaintiff.

And further answering said defendants' answer, by way of reply to the same, plaintiff denies each and every allegation of new matter therein contained.

S. L. KINGAN,
Attorney for Plaintiff.

W. P. Miller, being first duly sworn on oath, says that he is the attorney for the defendants in the above entitled action; that on the 10th day of February, A. D. 1906, and in open court and before any findings of fact or conclusions of law were made herein, he presented to the Judge of said Court, certain requests wherein and whereby the Court was requested to make certain findings of fact and con-
77 clusions of law herein, and that thereupon the court refused to make any of said findings of fact or conclusions of law, and further stated that he did not desire said request for findings to be filed as a part of the record herein, for the reason that the court

did not think that requests for findings were called for or proper under the practice prevailing in this Territory; that thereupon, the affiant, as attorney for defendants, advised said court that he would make an affidavit of the fact that such requests were made of the court and annex said affidavit to the findings of fact and conclusions of law so presented to the said court, and thereupon file the same with the clerk of said court, to which the court assented; that the said request for findings of fact and conclusions of law are hereunto annexed and made a part of this affidavit.

And further affiant saith not.

W. P. MILLER.

Subscribed and sworn to before me this 27th day of March, A. D. 1906.

[SEAL.] S. W. PURCELL,
Notary Public.

My commission expires April 22, 1908.

78 (Title of Cause.)

The defendants request the Court to make the following findings of fact and conclusions of law herein:

Findings of Fact.

1.

That the petition used as the basis for the special assessment proceedings herein involved was originally filed with the Mayor and City Council of the City of Tucson on the 8th day of April, A. D. 1901.

2.

That said petition as thus filed purported to be signed by the owners of a majority of the lineal feet lying along the south side of Congress Street and the north side of Maiden Lane, between Church Street and Court Street, and not otherwise.

3.

That said petition prayed that proceedings be taken by the City Council to condemn all private property in Block 206 in the City of Tucson, and that the land embraced therein be thrown open as a street and thoroughfare, and that all the land embraced between
79 what was then Congress Street, the north side of Maiden Lane, the west side of North Church Street, and the east side of Court Street, be made into one street and thoroughfare, which shall be known as, and be a part of Congress Street, in the City of Tucson, and that an equitable percentage of the expense of converting Block 206 into a street be levied by special assessment upon the property owners adjacent to the said improvements, upon a fair valuation of appraisement.

4.

That on the 8th day of April, 1901, the said Mayor and City Council passed and adopted Resolution No. 45, and Ordinance No. 145, both of which were offered and received as evidence herein.

5.

That said Ordinance No. 145, among other things, enacted that Congress Street and Maiden Lane of the City of Tucson, between Stone Avenue and Court Street, be altered and widened so as to include all the land lying east of Court Street and west of Stone Avenue, and between Maiden Lane and Congress Street; and that all that part of Maiden Lane lying between Stone Avenue, Maiden Lane and Court Street, and all land south thereof to
80 the south line of Congress Street, should, after the legal title or right to use the same therefor had been obtained, and the improvements removed, be known as and become a part of Congress Street.

6.

That said Ordinance No. 145 was thereafter repealed by Ordinance No. 149 of the City of Tucson, which last named Ordinance was offered and received as evidence herein.

7.

That thereafter by Ordinance No. 151, of the City of Tucson, it was, among other things, enacted that Congress Street and Pearl Street in the City of Tucson, be opened and widened so as to include all of Block 206 of the City of Tucson, bounded on the east by Church Street, on the south by Congress Street, on the west by Court Street, and one the north by Maiden Lane; and all that part of Maiden Lane lying between Church Street on the east and Meyers Street on the west, and said Block 206, and other lands in said ordinance named, should become a part of Congress Street after the condemnation and removal of certain improvements.

81 VIII.

That on the 19th day of June, 1903, the said petition so originally filed on April 8, 1901, was changed by the addition t-ereto of certain names, including that of the defendant Allen R. English, and that as thus changed on said 19th day of June, 1903, the petition involved herein was re-filed with the Mayor and Common Council of the City of Tucson, and became and is the foundation for the special assessment and condemnation proceedings herein involved.

9.

That the name of the defendant Allen R. English was so added to said petition, at said last named date by one Rochester Ford, acting as the attorney in fact of the said Allen R. English, under a written power of attorney.

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10.

That the authority of the said Rochester Ford for signing the name of Allen R. English to said petition was and is in words and figures, to wit:

JUNE 12, 1903.

Know all men by these presents that Rochester Ford of Tucson, Pima County, Territory of Arizona, has been and
82 hereby is appointed my true and lawful attorney in fact, for me and in my name and place and stead to petition the City Government of the City of Tucson, aforesaid, for the condemnation and removal of Block No. 206 (lower wedge), of said city, and also for the condemnation and removal of all property in said city west of Court Street therein and lying between Congress Street and Maiden Lane in said city.

To do and perform each and every act and thing whatsoever requisite or necessary in order to accomplish the end above indicated as desired.

Possessing full power and authority to this end, and as fully and completely as I might or could do if personally present.

Witness my hand and seal this, the day and date herein first above written.

(Signed) ALLEN R. ENGLISH. [SEAL.]

11.

The foregoing power of attorney was duly acknowledged by the defendant Allen R. English.

12.

That the said petition neither as thus filed October 8, 1901,
83 or as thus re-filed June 19, 1903, contained the signatures of the owners of a majority of the lineal frontage upon Congress Street, between Church and Court Street.

13.

That on June 19, 1903, the Mayor and City Council of the City of Tucson passed and adopted Ordinance No. 168 pleaded and set forth in the complaint herein.

14.

That thereafter and on the 6th day of July, 1903, the City of Tucson commenced an action in the District Court of the First Judicial District of the Territory of Arizona, in and for the County of Pima, wherein the City of Tucson was plaintiff and Lizzie J. Woods *et al.* were defendants, by the filing of its complaint in said Court, in which said plaintiff, among other things, *said plaintiff* alleged that the condemnation of the lands and premises in Block No. 206 was necessary for public use for the purpose of widening Congress Street in said city and praying that the improvements on and

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easement in all the property in said Block 206 be condemned for public use.

15.

That thereafter said District Court, in said action awarded
84 the damages to be allowed the owners of the lands in Block No. 206 upon a written stipulation and agreement of the parties therein, and not upon testimony. That this stipulation was filed in said Court and action on the 4th day of December, 1903, and that on said last named day the Court made award of damages. That the damages were so awarded for the taking of eas-ment in said land and for and on account of improvements on said lands, and that the respective damages awarded to the respective defendants and the several owners of the lands condemned was in every instance the sum stipulated and agreed upon in said written stipulation.

16.

That thereafter and in said action the plaintiff filed a supplemental petition praying the Court to cause an assessment to be made for the purpose of raising the amounts necessary to pay the compensation and damages which had been awarded on account of the property taken or damaged with the costs of the proceedings in the cause; and that thereupon the Court made its certain order therein wherein and whereby it appointed John W. Bogan, James Flynn and H. H. Pilling as Commissioners to make an assessment
85 for the purpose of raising the amounts necessary to pay the compensation and damages awarded, and to ascertain as near as might be the costs incurred at the time of the appointment, and the probable further costs of the proceedings, including therein an estimate of the cost of making and collecting such assessment, and to include all such costs in the sum total of such assessment; and to examine the locality of said Block 206, in the City of Tucson, and the lots, blocks, tracts and parcels of land which shall be benefited by the removal of the improvements upon said Block 206, and the widening of Congress Street contemplated and ordered by Ordinance No. 168 of the said City of Tucson; and to estimate what proportion of the total cost of the proposed improvement would be of benefit to the public, if any, and what proportion thereof would be of benefit to the property benefited, if any, and apportion the same between the City of Tucson, if the City of Tucson shall be benefited, and such property so benefited, so that each shall have its equitable proportion; and having found such amounts to apportion and assess such amounts so found to be of benefit to the property, upon the several lots, blocks, tracts and parcels of land in
86 the proportion in which they would be severally benefited by such improvement, but that no lot, block, tract or parcel of land should be so assessed in a greater amount than it would be actually benefited.

17.

That thereafter and on the 15th day of December, 1903, the Commissioners so appointed by said Court met for the alleged pur-

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pose of considering assessment benefits to be derived by various properties by the removal of the Wedge. At this meeting it was agreed by the said Commissioners that the north side of Maiden Lane, between Court and Church Streets, should be fifty per cent. of the entire assessment; that the south side of Congress Street, between Court and Church Streets, should be twenty-five per cent. of the entire assessment; that the adjacent property benefited, including the city at large, if any, should bear the balance, and the Clerk of the Board was instructed by and with the advice of the committee, to prepare an assessment roll showing the benefit to the property as aforesaid.

18.

That the original assessment roll herein involved, was thereupon made and signed by said Commissioners.

87

19.

That the City Council did not appoint any committee to make an estimate of the cost of the proposed improvements and that no committee was ever appointed by the Mayor and City Council to make or do any of the acts or things connected with the improvements, or with the special assessment involved herein; that no such committee ever reported to the Mayor or City Council anything had or done in the matter of the improvements or in the matter of the special assessments involved herein, and that the only report ever made to the Mayor and Common Council of the City of Tucson in such matters was that of the Commissioners appointed by said District Court.

20.

That at the meeting held by the said Commissioners on the 24th day of December, 1903, to hear objections of property owners to the special assessments levied by the Commissioners, there were present John W. Bogan, H. H. Pilling and James Flynn, all the members of said Commission. That the meetting was called to order at 2:15 o'clock p. m. by Chairman Bogan, whereupon, among other
88 things, the following proceedings were had, to wit:

By the CHAIRMAN: "The first name on the list is A. R. English, Lot 5, Block 197, $12,533.75."

Mr. Hereford, representing Mr. English, stated that there were several matters on which he would like to have an understanding. First, he wanted to know if the assessment was based on the theory that the property lying south of Mr. English, between the English property and Congress Street, would go to Mr. English, to which the Chairman answered: "Yes."

21.

Later and as a part of the proceedings of the meeting last named, Mr. Hereford, on behalf of the defendant Allen R. English, entered protest against the assessment. That at this meeting objections were

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made by numerous persons to the several assessment, but that no evidence was taken as to the same or opportunity offered for the presentation of said evidence, and that no rulings were made or entered by the Commissioners at this meeting as to any of said objections. That said meeting adjourned *sine die* at 4 o'clock p. m.

89 22.

That on December 29, 1903, there was a meeting of the Commissioners at the office of John B. Wright, for the purported purpose of considering the ob-ections made to the assessments at the public meeting of December 24, 1903. That at this meeting of December 29, 1903, the only change made in the original assessment roll was correcting the assessment made to the W. C. Davis estate, by changing the assessment appearing to be the true owners of the land assessed to the W. C. Davis estate. That at this meeting last named the public benefit was assessed in the sum of one dollar ($1.00). That there is no record of any notice given of this meeting of December 29, 1903, to any person or persons who had objected to or protested against their several assessments at the public meeting of December 24, 1903.

23.

That the original assessment roll and modified assessment roll, together with the report of the proceedings of the Commissioners in the matter of making said special assessments was presented to and filed with the Mayor and Common Council of the City
90 of Tucson, at a special meeting of said Mayor and Common Council held on the 30th day of December, 1903.

24.

That in said report and upon the face thereof there appeared a record and proceedings of the said Commissioners at the said public meeting and hearing of December 24, 1903, including the proceedings hereinbefore found as to the theory upon which the assessment of the said Allen R. English was based.

25.

That at said meeting of the Mayor and City Council on the 30th day of December, 1903, Resolution No. 100 of the City of Tucson, was passed and adopted and the said report and assessment were confirmed against the objection and vote of a member of said Common Council based upon the expressed ground that no time had been given for the consideration of the matter of the confirmation of such report and assessment.

26.

That no notice was even given of the time at which application would be made for the confirmation of the assessment herein
91 involved, or of the time when the same was actually had or made.

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27.

That the lands comprising the City of Tucson, to wit, Sections twelve (12) and thirteen (13- East, containing one thousand two hundred and eighty acres, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging were conveyed, given and granted by the United States of America to Sidney R. De Long, as Mayor of the City of Tucson, and to his successors and assigns, in trust for the use and benefit of the occupants of the Town of Tucson, County of Pima, and Territory of Arizona, by a patent of the United States of America dated the 1st day of July, 1874, and which said patent was made and delivered under and pursuant to the laws of the United States of America, relating to Townsites upon the public lands of the United States of America in force and effect at the date of said patent.

28.

That Maiden Lane of the said City of Tucson was a public highway and used as such by the general public at and before the
92 date of said patent, and that said Maiden Lane has been such public highway and so used at all times since the date of said patent up to and including the 19th day of December, 1903.

29.

That the property of the defendant, Allen R. English, is adjacent to and abuts upon the north side of said Maiden Lane.

30.

That Congress Street as actually laid out and established is of a uniform width of eighty feet and does not include any part of Maiden Lane, and that further it does not include all of the lands which were condemned in said condemnation proceedings and which formed part of said Block 206.

W. P. MILLER,
Attorney for Defendants.

93 Pages 93 to 113 of the Abstract of Records which contained the Finding of Facts in the District Court omitted by direction of Appellant.

And from the foregoing facts, the Court makes the following:

Conclusions of Law.

I.

That the presumption of law is in favor of the validity of the special assessment sued for in the complaint in this action, and that each and every step necessary to be done and performed in the making of said special assessment was done and performed in accordance with law.

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II.

That the filing of the petition with the Mayor and Common Council of the City of Tucson, signed by a majority of the
94 owners of the lineal frontage upon the improvement contemplated, to wit, the removal of Block 206, gave said Mayor and Common Council jurisdiction to pass Ordinance No. 168.

III.

That thereafter, the passage of said Ordinance No. 168 gave said Mayor and Common Council jurisdiction to commence Suit No. 3409, in this District Court.

IV.

That thereafter, the institution by the City of Tucson of said Suit No. 3409 in this District Court, gave this District Court jurisdiction to find the damages which would accrue to the defendants in said suit by reason of the improvement contemplated in said Ordinance No. 168, to wit, the condemnation of Block 206, said defendants being the owners of Block 206; and the filing of the supplemental petition in said suit by the City of Tucson praying the Court to appoint a commission to cause an assessment to be made upon the properties benefited to pay the damages so found by it, gave this Court jurisdiction to appoint such commission.

V.

That the appointment by this Court of such commission
95 gave to the commission jurisdiction to make the assessment and prepare the Assessment Roll.

VI.

That the said commission having in manner, time and form as provided by law, and by its orders received from said District Court, given all proper notices and held all necessary meetings, and having made said assessment, and Assessment Roll, and having presented said assessment and Assessment Roll to the Mayor and Common Council, the said Mayor and Common Council thereupon and thereby acquired jurisdiction to confirm such assessment.

VII.

That the Mayor and Common Council having jurisdiction to confirm, and having confirmed said assessment and said Assessment Roll, the same became and was and is a valid tax and lien upon the said lot of A. R. English, as other general City of Tucson Taxes are, and to the amount of said assessment against said lot.

VIII.

That the City of Tucson Collector of Special Assessments, having on the 21st day of December, 1904, made a report in writing

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96 to the General Officer of Pima County, authorized by the general revenue law of this Territory to sell for taxes due the County and Territory of said lot of said A. R. English, upon which he was unable to collect said special assessment, and having complied with the law in this respect, gave such County Officer, to wit, John W. Bogan, County Treasurer of Pima County, Arizona, authority to commence this action.

IX.

That the special assessment alleged in the complaint in this action, to be due to the plaintiff from the defendant A. R. English, is justly due and owing, and that the same is a valid tax, and that the Territory of Arizona and the City of Tucson, have a first and paramount lien upon the property of the defendant A. R. English, as described in the complaint, to the amount of such assessment, interest, penalties and costs.

X.

That the defendant A. R. English is and of right ought to be estopped from in any manner denying the validity of the said assessment.

97 XI.

That the plaintiff is entitled to judgment herein for the principal sum due, to wit, $12,533.75; that said principal sum should bear interest from December, 1904, until paid, at the rate of 12 per cent. per annum; that 15 cents should be added thereto for clerk's fees; that 25 per cent. should be added to said principal as attorney's fees; and that 4 per cent. of the total of the above amounts should be added thereto for the Tax Collector's fees; and that all costs of this action should be included.

XII.

That plaintiff is entitled to have judgment in accordance with these Findings and Conclusions, and a decree foreclosing the tax lien on the property described in the complaint, and according to the prayer thereof.

Done in Open Court, this Third day of February, A. D. 1906.

JOHN H. CAMPBELL,
Judge of said Court.

98 *Judgment.*

(Title.)

This cause coming on for trial on the 14th day of December, 1905, before the Court sitting without a jury, a jury having been waived by all parties hereto; and the plaintiff appearing by his attorney, S. L. Kingan, with William Lovell and John B. Wright, of counsel, and the defendant appearing by William P. Miller, his counsel; and

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certain oral and documentary evidence having been introduced by the respective parties, and the cause argued; and the Court upon request, and by consent of all parties, having given time to file written briefs.

Now on this the 3d day of February, 1906, the said cause being fully submitted, and the Court being thoroughly advised in the premises, and having made and filed its Findings of Fact and Conclusions of Law herein, now therefore,

It is ordered, adjudged and decreed, that the Special Assessment of the City of Tucson levied against the defendant A. R. English and the property of said defendant, to wit: Upon Lot Five (5) in Block One Hundred and Ninety-seven (197), in the sum of
99 $12,533.75, is justly due and unpaid. That the plaintiff do have and recover from the defendant A. R. English the sum of $12,533.75, with interest thereon from the 21st day of December, 1904, until paid at the rate of 12 per cent. per annum; that 15 cents be added thereto for clerk's fees; that 25 per cent be added to said principal as attorney's fees; and that 4 per cent. of the total of the above amounts be added thereto for the Tax Collector's fees; and that all costs of this action also be included.

It is further ordered, adjudged and decreed, that the lien of the Territory of Arizona and of the City of Tucson be enforced, and all equities foreclosed upon the said described real property, in accordance with law and the practice of this Court, and that such property, or so much thereof as may be necessary to satisfy this judgment, with all costs, accruing costs and charges, be sold.

Let execution issue.

Done in Open Court this 3d day of February, A. D. 1906.

JOHN H. CAMPBELL,
Judge of said Court.

100 (Title.)

Comes now the defendants, Allen R. English and Honora English, by their attorney, W. P. Miller, and moves the Court for a new trial herein and to vacate the findings of fact, conclusions of law and decree herein for the following reasons, and upon the following grounds, to wit:

1.

Because the Court erred in admitting and rejecting evidence upon the trial of this cause.

2.

Upon the grounds that the evidence does not sustain the findings of fact, conclusions of law and decree herein.

3.

Upon the ground that the evidence does not sustain the judgment and decree herein.

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4.

Because the Court erred in overruling defendants' plea in abatement herein.

W. P. MILLER,
Attorney for Defendants.

101 *Statement of Case.*

(Title.)

In the matter of the hearing had before the Court upon the defendant's plea of another action pending, in abatement of this action, and on the 16th day of September, 1905, James Flynn, the witness for the plaintiff, testified as follows, to wit: "I am City Assessor and Tax Collector, and was City Assessor during the year 1904. As City Assessor and Tax Collector I made a report in writing to the County Treasurer of Pima County." Being shown a paper, the witness further testified concerning the same: "This is the City Delinquent List of 1904, City Delinquent List of assessments on account of the removal of the Wedge, Block 206. Mr. English's name appears in this list for $12,533.75. This is the report I made to John W. Bogan, the Tax Collector of Pima County. My affidavit is attached thereto."

The witness being shown a further paper testified concerning the same: "That is my warrant for the collection of this special assessment. I filed this warrant on the 21st day of December, 1904, with John Bogan, the County Treasurer."

102 Thereupon the plaintiff offered in evidence the original report made by James Flynn, the City Tax Collector of the City of Tucson, containing special assessments delinquent for the year 1904, together with his oath and warrant of authority for the collection of the special assessments involved herein, and the same was admitted in evidence.

Thereupon and on the 16th day of September, 1905, the Court overruled the defendant's pleas in abatement to this action, to which ruling by the Court the defendants excepted.

The Court thereupon set the case for trial upon its merits, for December 13, 1905.

On the 13th day of December this cause was duly called for trial, and argument had upon the demurrer of the defendants to the complaint herein, and upon the motion of the plaintiff to strike out certain allegations of defendants' answer. Said matters were by the Court taken under advisement, and it was stipulated by the parties hereto that the decision of the Court upon said demurrer, and upon said motion to strike out might be reserved until the cause was fully submitted to the Court.

103 The defendant thereupon moved the Court to strike out the plaintiff's replication to the answer herein.

It was thereupon stipulated that the motion to strike out said replication and the other preliminary matters taken under advisement, and not yet passed upon by the Court, should not be determined until after the testimony in the case had been submitted.

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Counsel for plaintiff offered in evidence a certified copy of the modified and corrected assessment roll.

The defendant objected to the introduction in evidence of the same as incompetent, immaterial and irrelevant. First, because it did not appear that the assessment roll was made by authority of law. Second, because it was certified to as copy of the original and modified and corrected roll, and did not show what the original roll was, or the way in which it was modified or corrected.

This objection was by the Court overruled. To which ruling the defendants excepted.

The plaintiff next offered in evidence an order appointing Commissioners in Case No. 3409, in the District Court of Pima County, entitled City of Tucson *vs.* Lizzie J. Woods *et al.*

104 The defendant objected to the introduction in evidence of such order upon the following grounds:

First. That it did not appear that the order of the Court was made by authority of law in that there was no evidence in the case of the performance by the plaintiff of any of the statutory requirements in the matter of making the special assessment and upon which jurisdiction of the District Court depends in making an order for the assessment.

Second. Upon the further ground that the order was only a part of the proceedings had in the said case of the City of Tucson *vs.* Lizzie J. Wo-ds *et al.*, and that upon the face of the said proceedings and all of the same, it appears: First, that the award of damages made in said case was made by the Court upon the stipulation and agreement of the parties and not upon testimony taken in the cause.

Third. Because it appeared in said Court proceedings in which said order formed or constituted a part, that the assessment which was made by the Commission appointed by the order in question was made in excess of jurisdiction, in violation of law, and in violation of the order of the Court, in this: That the Commissioners appointed by said Court assessed not only the cost of the con-

105 demnation proceedings, including the amount of the award, and the cost of making the assessment, but also included as a part of said assessment, and in violation of the order of the Court, the actual cost of the removal of certain buildings, including the cost of labor, etc.

The Court admitted the order in evidence subject to the foregoing objection.

To which ruling of the Court counsel for the defendant then and there excepted.

FRANK S. TREAT, called as a witness on behalf of the plaintiff, testified as follows, to wit:

I am City Recorder and *Ex-Officio* City Clerk, have held such office three years.

Q. Now, Mr. Treat, as City Recorder and Clerk have you in your possession the original Minute Books of the proceedings of the Mayor and City Council of the City of Tucson?

A. I have.

Q. What does your minute book contain about the passage of Ordinance No. 168?

The defendant objected to this question as incompetent, irrelevant and immaterial.

First. Because it did not appear that there was any authority in law for the passage of Ordinance 168, in that it did not ap-
106 pear that any of the jurisdictional provisions of the statute in the manner of making special assessments had ever been had, made or complied with, as to the improvement provided for in Ordinance 168.

Second. That no committee was ever appointed by the City Council to make any estimate of the cost of the improvement, and it further failing to appear that any committee was appointed by the City Council to make any assessment roll for and on account of said improvements, or any part thereof, or any part of the costs and expenses thereof.

The COURT: The question may by answered subject to objection.

To which ruling of the Court, counsel for the defendant then and there objected.

By Mr. WRIGHT: We offer that in evidence.

Mr. MILLER: To that offer in evidence of the minutes concerning which the witness was questioned, counsel for defendant makes the same objection as to the previous question.

By the COURT: The same ruling.

To which ruling of the Court counsel for the defendant then and there excepted.

The witness thereupon read the minutes of the Common
107 Council of the City of Tucson, June 17, 1903, concerning the filing of the petition for the condemnation of Block 206, filed April 8, 1901, and the addition of signatures thereto, and the action of the City Council resulting in the passage of Ordinance 168.

Q. I will ask you to read the ordinance in evidence.

Counsel for defendant objected to the reading of the ordinance in evidence upon the same grounds, and for the same reason that objection *were* made to the reading of the minutes of June 17, 1903, concerning Ordinance 168.

The COURT: It may be admitted subject to the objection.

To which ruling of the Court counsel for the defendant excepted.

Witness thereupon read Ordinance No. 168. This ordinance was published in the Arizona Daily Citizen from June 22d until July 21st, ten times.

The plaintiff offered in evidence the entire judgment roll of Case No. 3409, in the District Court of the Judicial District of Pima County, Arizona, entitled City of Tucson against Lizzie J. Woods *et al.*

Defendant objected to the introduction of evidence of the
108 judgment roll in question as incompetent, irrelevant and immaterial upon the following grounds, to wit: That it did not appear that the assessment proceedings included in said judgment roll were in any way authorized by law.

Second. Because it appeared upon the face of said proceedings that the award made in said condemnation proceedings was made upon the stipulation and agreement of counsel as to the amount of damages, and not upon evidence offered in said case, and upon the ground that it then appeared in evidence that the assessment purporting to be made in said Court proceedings were illegal and void in that the Commissioners therein appointed in violation of the order of the Court, and in violation of law made the assessment, including not only the amount of the award in said assessment proceedings, the cost of said proceeding, and the cost of making the assessment, but also the estimate cost of making the improvement, including the moving of buildings, labor, etc.

Said judgment roll was admitted in evidence subject to the above objection.

To which ruling of the Court counsel for the defendant objected.

100 The plaintiff next offered in evidence the minutes of the District Court of Pima County, contained in Book 3, pages 470 and 471, in said Case 3409, to wit, the minute entry of December 3, 1903.

The defendant objected to the introduction in evidence of the said minute entry upon the ground that it was incompetent, immaterial and irrelevant.

The evidence was admitted.

To which ruling of the Court the defendant excepted.

The plaintiff offered in evidence a certified copy of the modified assessment roll for the removal of Block 206, certified to be a full, true and correct copy.

The defendant objected to the introduction in evidence of the purported certified copy of the modified assessment roll as incompetent, immaterial and irrelevant.

The same was admitted subject to the objection of counsel.

To which ruling of the Court counsel for defendant objected.

Q. Mr. Treat I will ask you to look in the minute book of the proceedings of the Mayor and Common Council of the City of Tucson, and show what action, if any, was taken with reference

110 to the assessment roll which was presented to the Mayor and Common Council.

The defendant objected to this question as immaterial, incompetent and irrelevant, upon the grounds and for the reasons following, to wit:

First. That there was no authority in law for the confirmation by the City Council of the assessment roll in question.

Second. Upon the ground that the assessment roll must show upon its face affirmatively that the assessment was made in accordance with the benefit to each particular tract of land assessed, and that the assessment roll in question does not show affirmatively upon its face or purport to show that said assessment was so made.

Third. Because it does not appear that any notice was given to any person or persons of the time when the alleged confirmation proceedings were had, or to be had.

By the COURT: I will admit the evidence subject to the objection.

To which ruling of the Court counsel for the defendant excepted.

Mr. Treat thereupon read from the record book of minutes of the City Council of Tucson, Arizona, of date December 30, 1903.

111 Mr. WRIGHT:

Q. What, if anything else is said in that meeting in reference to this matter?

A. Resolution No. 100 on the following page, ccc.

Q. Read that.

A. (Witness reads Resolution No. 100.)

Mr. WRIGHT: We offer that in evidence.

The defendant objected to the offer in evidence of Resolution No. 100, for the reason that the same was incompetent in that it did not appear that the statutory requirements for legal assessments had been pursued in this case, and because the purported confirmation of the assessment roll was the confirmation of an assessment roll not provided for by law.

Second. Because the said purported confirmation was had without any notice provided by law, or the giving, in fact, of any notice to the parties interested, or to any persons whomsoever. And upon the further ground that it appeared by the records of said Council that in the matter of the purported confirmation of said assessment roll proceedings, an objection was made by a member of said Council to the confirmation thereof upon the ground that no time had been had or given for the consideration of any protests against

112 said purposed assessment, or for the consideration of the assessment.

The Court admitted said resolution in evidence.

To which ruling of the Court council for the defendant objected.

Witness said the said assessment roll was same one referred to in Resolution 100.

Cross-examination.

By Mr. MILLER:

Q. Will you please produce the original assessment roll of which you testify that the assessment roll offered in evidence is a certified copy.

A. We have the roll.

Q. Will you produce it?

A. I will have to go to the office and get it.

Q. At this time the witness has produced a paper, which for the purpose of identification may be marked Defendant's Exhibit A, and the witness is requested to state whether or not said exhibit is the report and the original assessment roll which was referred to in the minutes of the Council, December 30, 1903, concerning which you have testified?

A. Yes, sir.

Q. You state whether or not what purports to be the min-

113 utes of the meeting held by the assessment committee formed a part of Exhibit A, and was attached to what purports to be

the original assessment roll, filed, and to which reference is made in the minutes of December 30, 1903, concerning which you have testified?

A. Yes, sir; the minutes of December 30, 1903, are as to the roll as mentioned.

Q. The question is whether or not what purports to be the minutes of the meetings held by the Committee was attached to this original assessment roll, and formed a part thereof at the time when the same was filed, to which the minutes of December 30, 1903, concerning which you have testified relates?

A. Yes.

Q. I will ask you whether or not the meeting of the City Council, the minutes of which you have read, was a special meeting of the City Council?

A. It was.

Mr. TREAT:

Q. I will ask you to state whether or not at that meeting and upon the question of the adoption and confirmation of the report and assessment roll, whether the minutes do not expressly show that Councilman Barkley, asked that his vote be recorded "No," and that he asked that the matter be deferred for further consideration.

114 The plaintiff objected to this question as immaterial, because minutes themselves are the best evidence.

Whereupon the Court said that a part of the minutes having been introduced by the plaintiff, the defendant was entitled to have all of the same, and that if the question required the witness to read the entire minutes of the meeting, he thought it was proper.

Q. Just read the entire minutes of the meeting of December 30, 1903, of the Mayor and Common Council of the City of Tucson.

By Mr. MILLER: Now, if the Court please, as a part of this cross examination, I offer in evidence Exhibit A, concerning which the witness Frank S. Treat has been examined, purporting to be the minutes of the meetings held by the Assessment Committee appointed by the Court, and the original assessment roll filed with the City Council and to which reference is made in Resolution 100, in the minutes of the said Council, December 30, 1903, which have already been introduced in evidence.

And the same was thereupon admitted in evidence by the Court.

Q. Mr. Treat, you have testified concerning Ordinance No.
115 168, and have read to the Court what purports to be Ordinance No. 168; you may state whether or not prior to the passage of said Ordinance No. 168, a petition was filed for the improvement in question?

Plaintiff objected to this question, and the Court sustained said objection.

To which ruling by the Court counsel for defendant excepted.

Q. You may state, Mr. Treat, whether your records show whether any notice was given of this special meeting of the City Council

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December 30, 1903, to property owners who were to be assessed for the proposed improvement of that meeting of the Council and the purpose for which it was to be held?

Plaintiff objected to this question as immaterial. And the objection was sustained by the Court.

To which ruling of the Court counsel for defendant excepted.

Q. You may state whether or not the records of the City Council show or purport to show that any notice whatever was given to property owners to be assessed for the improvements involved in this case of the time of the holding of said meeting and the purpose for which same was held?

116 The plaintiff objected to the question as immaterial.

By the COURT: This does not appear to be proper cross examination, and the objection on that ground will be sustained.

Thereupon the plaintiff objected on the ground that it was not proper cross examination.

This objection was sustained by the Court.

To which ruling the defendant excepted.

The plaintiff next offered in evidence a certified copy of the warrant for the collection of the special assessment for taxes as turned over by James Flynn, City Tax Collector, to John W. Bogan, Treasurer and Tax Collector of Pima County, and to which was attached the Delinquent Special Assessment List of the City of Tucson, for the year 1904.

The defendant objected to the introduction in evidence of the said warrant and other matters referred to in the said offer on the ground that the same was incompetent and irrelevant, it not appearing to be made in pursuance of law or with authority of law, there being no evidence in the case of the appointment by the City Council of a committee to estimate the cost of the improvement as required by law, there being no evidence in the case *of* any estimate by the
117 committee making the assessment for and on account of the cost of the improvement or any part thereof, there being no evidence in this case of a petition of the owners of a majority of the lineal frontage on the improvement being presented or filed with the City Council or otherwise, and no evidence that such petition was ever had or made.

By the COURT: It may be admitted subject to the objection.

To which ruling of the Court counsel for defendant then and there excepted.

FRANK S. TREAT, recalled as witness for plaintiff, testified as follows: James Flynn is the City Tax Collector, and was such in the year 1903; he has been such Tax Collector about eight years.

Mr. WRIGHT: We next offer to introduce in evidence original tax bill as attached to complaint in this action.

Mr. MILLER: The defendant objects to the offer as incompetent, irrelevant and immaterial for the reason and upon the grounds that it does not appear in this case that any petition was ever filed for the

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improvements in question signed by the owners of a majority of th-
lineal frontage upon said improvement or otherwise; and for
118 the reason that it does not appear that the City Council ever
appointed any committee to make an estimate of the cost of said improvement, or ever made any estimate of said improvement of the cost thereof; that it does not appear that the City Council ever appointed any committee to make an assessment of the cost of said improvement or any part thereof, and because it appears in evidence upon the face of said assessment roll itself that the same was not made for or on account of benefit to the particular tracts and several tracts of land assessed, including that of these defendants; that it does appear from the report of said committee and upon the face of said assessment roll that said assessment was made upon the basis of lineal frontage, arbitrarily and without reference to benefits, and that it included in the purported estimate of benefit to the lands assessed or purported to be assessed for the improvement involved herein, the value of lands owned by the city, and the value of lands held in trust by the city, which it proposed to convey and dispose of to the owners of the property assessed for the alleged improvements involved herein.

This objection was overruled. To which ruling the defendant excepted.

119 The plaintiff then offered in evidence in connection with the judgment roll in case No. 3409 the findings of fact and conclusions of law made therein.

It was stipulated that counsel for plaintiff might offer the testimony of O. M. Anderson, as taken in said action No. 3409, at any stage of the trial of this action with the same force and effect as though offered as a part of plaintiff's original case.

The plaintiff thereupon rested its case.

The defendant called FRANK S. TREAT, as a witness on behalf of the defendant, who testified as follows, to wit:

Q. You may examine a paper for the purpose of identification — is marked defendant's Exhibit 2, and you may state when the same was first filed with the City Council.

A. It was filed April 8, 1901. Nat E. Hawke, City Clerk.

Mr. KINGAN: If the Court please, we have now a certified copy of the testimony of O. M. Anderson, which was spoken of this morning, and we now offer it in evidence.

Mr. MILLER: Defendants object to offer of this testimony at this time as tending to add to or change and modify the record in the
case of the City of Tucson *versus* Lizzie J. Woods *et al.*, in
120 which case it is claimed that said testimony was given by the
witness, O. M. Anderson, it appearing on the face of the proceedings that counsel in that case stipulated the value of the property condemned, and that the award of the Court included the value of the property as stipulated.

By the COURT: It may be admitted subject to the objection.

To which ruling of the Court counsel for the defendant then and there excepted.

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Q. (To Witness TREAT:) Have you the official records of the City of Tucson, containing the minutes of the Council of the year 1901.

A. Yes, sir.

Q. Turn to the date April 8, 1901, and state whether or not anything appears in the minutes of the Council with reference to the filing of Exhibit 2.

A. This is the record minute book of the Common Council from January 27, 1895, to 1902. The witness then read from page 626 of said minute book and from the minutes of April 8, 1901, concerning the petition for the widening of Congres- Street, concerning Blocks 206 and 207.

Q. Is the Exhibit 2 the petition that was filed and referred to in these minutes?

A. I do not know.

121 Q. Have you any other petition in your office filed as of April 8, 1901, than Exhibit 2?

A. Not that I know of.

Q. You have looked these matters up considerably prior to this time?

A. Yes, sir.

Q. Do you know of any other petition that could be referred to in these minutes except Exhibit 2?

A. I don't know of any.

Q. You say that this petition shows on its face that it was first filed April 8, 1901?

A. April 8, 1901. Yes, sir.

Q. There appears upon Exhibit 2 the following: "The following additional names were submitted to the Council June 19, 1903." Were you acting as City Clerk on June 19, 1903?

A. No, sir; I was away; had a deputy there at that time.

Q. Your deputy represented you at that meeting?

A. Yes, sir.

Q. You may state whether you know that handwriting (Exhibiting paper to witness).

A. I know that is Nat Hawke's handwriting.

Q. Who is Nat Hawke?

A. He was Clerk *pro tem.*

Q. Your attention is called to the following: "English, Allen, by Rochester Ford, Attorney-in-Fact;" Herbert B. Tenny, Executor of W. C. Davis; Mattie Davis;" Are these entries all in the

122 handwriting of Mr. Hawke?

A. [The answer should read: "The endorsement was made by Hawke; the names to the petition, I presume, were written by those persons."]* Yes, sir; they are.

Mr. MILLER: The defendant at this time offers in evidence Exhibit 2, being the petition concerning which the witness is testifying, and calls the attention of the Court to the signature on said petition of Allen R. English, by Rochester Ford, Attorney-in-Fact, and also that of H. B. Tenney, Executor of the estate of W. C. Davis, insisting at

[* Matter enclosed in brackets written in pencil on the margin.]

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this time that the signatures in question are appended to said petition without authority of law, and that they were ad-ed on June 19, 1903, in order to make effective a petition which had become *functus officio*, and which had been filed April 8, 1901.

Q. When that petition was filed on April 8, 1901, what proceedings were had with respect to it by the City Council?

A. Resolution No. 45 was passed by Council, and Ordinance No. 145.

And defendant thereupon offered Resolution No. 45 in evidence, and also the petition Exhibit 2. The defendant also offered in evidence Ordinance No. 145.

Q. Now, Mr. Treat, isn't it a fact that some months ago I requested your attention to the matter of this peti-ion, or as to what
123 petition was filed on April 8, 1901?

A. You did.

Q. Isn't it a fact that for some months you have been familiar with the proceedings had so far as the records of your office show with reference to the petition offered in evidence here?

A. That is the only petition fil-d for Block 206; there was another petition filed for Block 207, but I do not remember what ordinance effected it.

Q. I ask you whether there is any record of any proceedings had by the City Council with reference to the petition which has been offered in evidence as Exhibit 2, which you say was filed in your office April 8, 1901, until June 19, 1903?

A. I do not know of any action on it.

Q. I understand you to say, Mr. Treat, that on the 8th day of April, 1901, two petitions were filed, one asking for the removal of Block 206, involved in this proceeding, and one for Block 207.

A. As near as I can remember.

Q. Please refer to your records and state what action the Council took on both of those petitions.

A. April 8, 1901, petitions offered from holders on Congress Street and Maiden Lane, and fronting Blocks 206 and 207,
124 for condemnation proceedings to be instituted against said Blocks, were read, received and filed. And said Resolution No. 45, and Ordinance No. 145, were then passed.

Q. Now, what further proceedings were had as disclosed by your record in the matter of the attempt to condemn those blocks?

A. A committee of three was appointed by the Mayor on motion of Reid, seconded by Hale, this committee was to proceed according to Act of Legislative Assembly.

Q. Where is that record contained?

A. On page 27 of the same book.

Page 27 of said minute book of the Common Council from which the witness testified, was offered in evidence by the defendant.

The defendant next offered in evidence Ordinance No. 149 of the City of Tucson. Defendant also offered in evidence Ordinance No. 151 of the City of Tucson.

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The defendant then offered in evidence as a part of its case Exhibit A, and which had been offered in evidence as a part of its cross examination of the witness Treat, purporting to be the minutes of the meeting of the committee which made the assessment involved herein, and the original assessment roll which was by the Court admitted in evidence.

125 Q. During the intermission of the Court have you examined the records of the City Council to ascertain whether or not you could find any record of the appointment of a committee to estimate the cost of the improvement involved in this proceeding?

A. I hunted the records from the time the ordinance was passed, and am unable to find anything.

Q. Do you find, during the same time, a report or record of any report made by the Committee of the estimate of the cost of this improvement?

A. I do not.

The defendant then offered in evidence the minutes of the meeting of the City Council, June 19, 1903.

Cross-examination:

Q. Mr. Treat, will you please look at Ordinance No. 151?

A. Do you want me to read that ordinance?

Q. Yes, sir. Witness then reads Ordinance No. 151.

Mr. WRIGHT: Now, if the Court pleases, we want to introduce in evidence a record of this Court—Case No. 3173, entitled the City of Tucson against W. P. Woods and others.

Defendant objected to this as incompetent, irrelevant and immaterial and not cross examination, being evidence in rebuttal,
126 if anything—or a part of plaintiff's case in chief.

By the COURT: It may be admitted—the complaint in this action and the order of dismissal.

To this offer of the complaint, answer, and order of dismissal the defendant objected as incompetent, irrelevant and immaterial, and not proper cross examination.

Witness testified that petition, defendant's Exhibit 2, was one on which Ordinance 168 was passed.

JESSE B. WRIGHT, called as a witness on behalf of the defendant, testified as follows: My name is Jesse B. Wright. I reside in the City of Tucson, and am City Engineer, and as such City Engineer I have in my possession the maps and records belonging to the city.

Q. You may state whether the map now shown you, endorsed "Map or original Blocks 197, 206 and 210, showing present line of Congress Street, etc.," dated December, 1905, was made by you?

A. Yes, sir.

Q. You may state whether or not it was made from the official records of your office, and whether it is correct?

A. It was compiled from maps of the proposed widening of Congress Street.

127 Q. From maps made by whom?

A. By the former City Engineer.

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Q. Does it show the proposed widening of Congress Street?
A. Yes, sir.
Q. Giving the dimensions, measurements and everything?
A. Yes, sir.
Q. State what the two red lines on this map indicate?
A. The present line of Congress Street.
Q. You may state what the figures on the map, 197, 5, represent?
A. Lot 5.
Q. In block?
A. Block 197.
Q. State what this enclosure is between the black lines marked Maiden Lane?
A. It indicates Maiden Lane as it originally was.
Q. Maiden Lane as it originally was?
A. The south boundary of Block 207, as it now exists, was the north line of Maiden Lane, but the south line of Maiden Lane has been obliterated by the removal of Block 206.
Q. Does the south line of Maiden Lane appearing on this map indicate the south line as it was prior to the improvement?
A. Yes, sir.
Q. Now you may state whether this map correctly shows in proportion to the other features indicated upon the map, Block 206 in this city.

128 A. It indicates it so far as the correctness of the map from which it was compiled was correct.

Q. You may state what the present width of Congress Street is?
A. Eighty feet.
Q. You may state whether Congress Street as it now exists includes all of the lands in Block 206, which were condemned in these proceedings.
A. No, sir; not all.
Q. You may state to the Court, from this map, how much of Lot 7, in Block 206, is included in Congress Street as it now is?
A. There is no absolute record of that; I simply scaled that and it showed 37½ feet cut off from the south end.
Q. In other words, that is included in Congress Street?
A. Yes, sir.
Q. It leaves approximately how much not in Congress Street?
A. Twenty-two feet.
Q. Does or does not that line adjoin the south line of Congress Street?
A. That part of the lot adjoins the south part of Maiden Lane.
Q. With reference to Lot 6, in Block 206, what portion of that lot after being condemned was incorporated into Congress Street, approximately?
A. Well, I haven't a record on this map, but it will be approximately 37½ feet along the south end of Block 206, except up

129 at the east end of Block 206, which was at the time 39.6 feet.

All of Lots 2, 3, 6, 7 and 8 in Block 206, are not included in Congress Street as established by the city, but approximately all of Lot 1 was included in Congress Street. Lot No. 1 is the only lot in

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Block 206, all of which was incorporated into Congress Street as actually laid out by the city authorities so far as I know, and so far as appears on this map; no part of Maiden Lane was incorporated into Congress Street, as widened, except that part which is immediately abutting on Lot 1, Block 206. The lineal frontage on the South side of Congress Street, along Block 210, is 274.52 feet.

Q. Please state the amount of lineal frontage on Congress Street as it was prior to the improvements involved herein, between Church and Court Street.

A. Approximately 261.4 feet.

It was stipulated by the parties herein to be a fact that none of the owners of land in Block 206 signed the petition, Exhibit 2, which was used as the basis for the proceedings involved herein, and defendant introduced in evidence a map concerning which the witness last named testified, being marked defendant's Exhibit 10.

130 Cross-examination:

I have lived in the City of Tucson about eight months. I was here just before the removal of Block 206, and just afterwards, but not at the time.

Q. As I understand your testimony, you say that Congress Street does not take in all of Block 206.

A. Yes, sir.

Q. You base that upon this map, do you, or on the facts as they existed?

A. I based it upon the original maps which were made of the proposed extension of Congress Street.

Q. Of the proposed extension of Congress Street?

A. Yes, sir; and which was afterwards as a matter of fact——

Q. Does not Congress Street include all of what was Block 206?

A. No, sir.

Q. Is it not a fact that after the removal of Block 206, Congress Street did embrace all of Block 206?

A. No, sir; to the best of my belief it does not.

Q. Are you acquainted with Ordinance No. 168, for this improvement?

A. I know nothing of the ordinances at that time; I had not read them; I based my statement that Congress Street does not include all of Block 206, upon the maps which were adopted by the Council of the proposed widening.

131 Q. When was that map you spoke of adopted?

A. I do not remember.

Q. Was it before or after this Block 206 was removed?

A. I could not say; I should think it was before.

Q. Now, you state that the frontage on the south side of Congress Street, between Church Street and Court Street, was 261.4 feet?

A. Approximately; yes, sir. In this I do not include the alley known as Davis Alley, between Block 210 and 211.

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Redirect examination:

Q. This map shows not only Congress Street as it existed prior to the improvement, but Congress Street as it exists since the improvement, does it not?

A. Yes, sir.

Q. Do you know, as a matter of fact, whether there is a building resting upon what was formerly Maiden Lane, and on the north end of Lot 7?

This question was objected to as being immaterial, and the objection being sustained by the Court, the defendant excepted to the ruling of the Court, and offered to show by the witness that Congress Street as actually laid out and as at present existing, did not include the lands on the north end of Lots 7, 6, 4, 3, 2, and 8, in Block 206.

132 The plaintiff objected to this offer, which objection was by the Court sustained.

To which ruling of the Court counsel for defendant then and there excepted.

SAMUEL HUGHES, called as a witness on behalf of the defendants, testified as follows:

My name is Samuel Hughes. I have resided in the City of Tucson since March, 1858.

Q. Were you familiar with the public streets and highways of the City of Tucson, as they existed prior to the 1st day of July, 1874?

A. Yes, sir.

Q. You may state whether on and prior to the first day of July, 1874, the highway known as Maiden Lane in this city, was in existence and in use by the public?

A. It was.

The plaintiff thereupon objected to the question last referred to, which objection was by the Court sustained.

The defendant thereupon offered to show by the witness, Samuel Hughes, that he had been a resident of the City of Tucson, for the time testified to by him; that he is familiar with the streets *nad* highways of the City of Tucson as they existed on and prior to the first day of July, 1874, and that at said date, and prior thereto, the highway now known as Maiden Lane, was a public highway in the

133 City of Tucson, and was and had been for many years used by the public as a public highway, and that Lot 5, in Block 197, involved in the proceedings herein was at that time occupied, and as so occupied abutted upon the north line of Maiden Lane.

The plaintiff objected to this offer as immaterial, and irrelevant, and the Court sustained said objection.

To which ruling by the Court the defendants then and there excepted.

The defendant thereupon offered in evidence a certified copy of the patent from the Government of the United States to the City of Tucson, for the purpose of showing that the title to Maiden Lane was

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vested in the Mayor of the City of Tucson, and his successors, in trust for the use and benefit of the occupants of lands in the townsite.

The defendant next offered in evidence a certified copy of deed No. 1258 made by the City of Tucson, by Chas. F. Schumacher, Mayor, to B. Hattich, in pursuance to resolution 108 passed and adopted by the Mayor and Common Council on the 5th day of July, 1904, purporting to convey certain premises described as follows, to wit: Commencing at the southwest corner of Lot 3 in Block
134 197, according to the official map and survey of the said city, made by S. W. Foreman, running thence westerly 55.3 feet to a point; thence northerly 38.25 feet to the southeast corner of said Lot 3; running thence westerly along said line of said Lot No. 3, as heretofore surveyed by said Foreman, 55.2 feet to the place of beginning, being shown upon the map of Block 197, approved by the Mayor and Common Council of the City of Tucson, on the 5th day of July, 1904, and being the property condemned by said party of the first part for the purpose of widening Congress Street, in the City of Tucson, and making the same a uniform width of eighty feet throughout its entire length.

The plaintiff objected to the offer in evidence of said deed. Which objection was by the Court sustained.

To which ruling by the Court counsel for defendant excepted.

The defendant thereupon offered in evidence Resolution No. 108 of the City of Tucson.

To which offer objection was made that the same was immaterial.

Which objection was sustained by the Court.

135 Counsel for defendant then and there excepted.

It was then stipulated that counsel for defendant might introduce further testimony, but at this time, for the convenience of Court and counsel, while waiting for defendant's witness, plaintiff might introduce rebuttal testimony.

Mr. LOVELL: I offer in evidence a power of attorney from Allen R. English the defendant in this case dated June 12, 1903, to Rochester Ford authorizing him to sign the petition.

JOHN B. WRIGHT, called as a witness on behalf of plaintiff, testified as follows, to wit: My name is John B. Wright; I reside in Tucson, Arizona; I was City Attorney of Tucson during the years 1903 and 1904. I know the defendant, Allen R. English, and knew him during said years. I had a great many conversations with Mr. English, concerning the assessment made by the City of Tucson on Lot 5, Block 197, in the City of Tucson.

Q. Please state what was said at these conversations?

A. They all related to the removal of Block 206, and the assessment upon Mr. English's property; they related largely to the matter of Mr. English raising money to pay his assessment, and
136 Mr. English was very much worried lest the project would fail——

Q. State whether or not you told Allen R. English of the assessment proceedings by the City of Tucson for the removal of Block 206.

Mr. MILLER: That is objected to as incompetent, irrelevant and immaterial, calling for a conclusion of this witness.

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By the COURT: The witness may answer the question subject to the objection.

To which ruling of the Court counsel for defendant then and there excepted.

A. Yes, sir.

Mr. KINGAN:

Q. What, if anything, did you say to him and at what time was this?

A. The time I specifically remember was just prior to the sale of the said assessment bonds. I went at the request of the Mayor of Tucson at that time to Tombstone, to see Mr. English, to see if he could assist us in some way in raising the amount of his assessment or disposing of these bonds. At that time in a general way Mr. English and I went over the proceeding and he asked me to see Ben Goodrich and Costello, and see whether we could persuade Costello to purchase sufficient of the bonds, so if he foreclosed the mortgage he could turn these in for assessment.

137 Mr. MILLER: I move to strike out all of this testimony as incompetent, irrelevant and immaterial.

The COURT: At this time the motion will be denied.

The WITNESS (continuing his answer): I then went back to explain to Mr. English that Mr. Costello would not do this. We discussed the matter then at some length, and I told Mr. English that unless we could dispose of some of these bonds the improvement would fail. He asked me to go to Bisbee, and see certain friends that he had in Bisbee, and request them to purchase these bonds, and to do it upon Mr. English's request. He gave me cards of introduction to certain of these people in Bisbee. I attempted to sell the bonds there, but failed to do it, and then I returned to Tucson.

Q. State whether or not you know the defendant, Allen R. English, knew of the various proceedings by the City Council of the City of Tucson, in the District Court of the First Judicial District of Pima County, of these proceedings, that is to say, if he knew of these various steps as the- were being taken?

Mr. MILLER: I object to that as incompetent, immaterial and irrelevant, and calling for a conclusion as to what Mr. Eng-
138 lish knew.

The COURT: It may be answered subject to the objection.

To which ruling of the Court counsel for defendant then and there excepted.

A. He knew all of them. I do not know whether he knew each specific step, but he knew generally and concurred in it, and assisted the thing all the time.

Cross-examination:

By Mr. MILLER:

Q. Now, Mr. Wright, would you pretend to say that you yourself knew of any of these alleged defects in the proceedings at the time you had these conversations with Mr. English?

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A. I certainly did not.

Q. Do you now claim that Mr. English knew the exact facts with respect to any of the matters herein alleged as defective?

A. I do not presume he did.

Q. He knew in a general way that a petition had been filed for the moval of this property?

A. He did.

Q. He had signed the petition himself by Mr. Ford, as his attorney?

A. Yes, sir.

Q. He knew his property had been assessed?

A. Yes, sir.

139 Q. He knew a hearing was to be had on this assessment?

A. Yes, sir.

Q. He knew the law provided for the confirmation of this assessment, and the statute for condemnation proceedings?

A. Yes, sir.

Q. When you say he knew of the steps taken by the city in a general way, that is the character of the knowledge you referred to?

A. Yes, sir.

Q. You would not attempt to swear that Mr. English knew of any of the matters which his present attorney has brought up, as to their legality?

A. Certainly not.

By the COURT: Is there any further rebuttal?

Mr. KINGAN: No, sir; we have nothing further.

By the COURT: Is there any further testimony?

Mr. MILLER: Only this map.

By the COURT: You may proceed.

The defendant thereupon offered in evidence the maps described in the deed from the City of Tucson, through Schumacher, Mayor, to B. Hattich, for the purpose of identifying the property conveyed thereby as being a part of Maiden Lane, and a part of the land constituting Lot 7, in Block 206.

140 The plaintiff objected to the offer of said map in evidence as immaterial, because it was made long after assessment.

Which objection was sustained by the Court.

To which ruling by the Court counsel for defendant then and there excepted.

The defendant then recalled the witness, FRANK S. TREAT, who testified as follows:

Q. You are the same Mr. Treat who testified already in this case.

A. Yes, sir.

Q. You are the *Ex-officio* City Clerk of the City of Tucson?

A. Yes, sir.

Q. You may state whether or not, Mr. Treat, there appears among the records of the city at any place and record that the Common Council ever appointed a committee of three persons to make an examination of the premises to be affected and to make an estimate of the cost of the improvement contemplated by Ordinance 168 herein.

A. I have been unable to find any.

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Q. You may state whether or not you were able to find any report made by any committee appointed by the Common Council of the City of Tucson to make such estimate.

A. I do not know of any report of any committee appointed by the Common Council.

141 Q. State whether or not there is any report of any committee appointed by the Common Council to examine the locality where the improvements involved herein were to be made, and the lands, blocks and parcels of land which would be benefited thereby.

A. No committee was appointed by the Common Council for that purpose.

Q. Then the only report is that made by the committee appointed by the Court.

A. Yes, sir.

W. P. MILLER,
Attorney for Defendant.

We do hereby certify and stipulate that the foregoing statement of facts, containing exceptions, is true and correct.

S. L. KINGAN,
JOHN B. WRIGHT,
WM. M. LOVELL,
Of Counsel,
Attorneys for Plaintiff.
W. P. MILLER,
Attorney for Defendant.

I do hereby certify that the foregoing statement of facts, containing exceptions, is true and correct.

JOHN H. CAMPBELL, *Judge.*

142 EXHIBIT A.

Minute Entries and Judgment.

(Same Venue and Title.)

Be it remembered, that heretofore and upon to wit, the 8th day of May, 1905, the same being one of the regular juridicial days of the April, 1905 term of said Court, the following order *inter alia,* was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to wit:

3814.

TERRITORY OF ARIZONA, Plaintiff,
vs.
A. R. ENGLISH ET AL., Defendants.

It is by the Court ordered that this cause be set for trial Monday, June 26, 1905, at 9:30 o'clock a. m.

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And afterwards and upon, to wit, the 2d day of June, 1905, the same being one of the regular juridicial days of the April, 1905, Term of said Court, the following order, *inter alia,* was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to wit:

143

3814.

TERRITORY OF ARIZONA, Plaintiff,
vs.
A. R. ENGLISH ET AL., Defendants.

On motion of S. L. Kingan, Esq., counsel for plaintiff herein, it is ordered that the hearing on the plea of another suit pending, be set for Saturday, June 10, 1905, at 9:30 o'clock, A. M.

And afterwards and upon, to wit, the 10th day of June, 1905, the same being one of the regular ju-dicial days of the April, 1905, term of said court, the following order, *inter alia,* was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

3814.

TERRITORY OF ARIZONA, Plaintiff,
vs.
A. R. ENGLISH ET AL., Defendants.

This matter came on this day regularly to be heard upon the pleas in abatement of the defendant herein, S. L. Kingan, appearing as counsel for the plaintiff, the defendants not appearing either
144 in person or by counsel; argument of counsel was had and the matter *and* not being fully submitted to the court, same was by the court ordered continued until Friday, September 15, 1905, at 9:30 o'clock a. m.

And afterwards and upon, to wit, the 15th day of September, A. D. 1905, the same being one of the regular juridicial days of the April, 1905, term of said court, the following order, *inter alia,* was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

3814.

TERRITORY OF ARIZONA, Plaintiff,
vs.
A. R. ENGLISH ET AL., Defendants.

Upon motion of counsel for defendants herein, it is ordered that the further hearing on the pleas of abatement of the defendants herein, be now continued until Saturday, September 16, 1905, at 9:30 o'clock a. m.

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And afterwards and upon, to wit, the 16th day of September, 1905, the same being one of the regular juridicial days of the April, 1905, term of said court, the following order *inter alia,* was
145 had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

3814.

TERRITORY OF ARIZONA, Plaintiff,
vs.
A. R. ENGLISH ET AL., Defendants.

This matter having been continued from yesterday's session of this court for further hearing upon the pleas in abatement of the defendants herein, S. L. Kingan, Esq., and Thomas Flannigan, Esq., for the defendants, the plaintiff thereupon called as a witness James Flynn, who was duly sworn, examined and cross examined and also introduced certain documentary evidence, whereupon further argument of counsel followed and the said matters being now fully submitted to the court, and the court being fully advised in the premises, does overrule said pleas, to which ruling of the court in overruling said pleas, the defendants through their counsel, except.

And afterwards and upon, to wit, the same day, the following other order was had and entered of record in said court in
146 said cause, which said order is in words and figures, as follows, to wit:

3814.

TERRITORY OF ARIZONA, Plaintiff,
vs.
A. R. ENGLISH ET AL., Defendants.

Upon the application of S. L. Kingan, Esq., counsel for the plaintiff herein, it is ordered that the plaintiff be granted leave to withdraw plaintiff's Exhibits A and B, introduced in evidence this day upon the hearing of defendant's pleas in abatement herein, upon substitution of certified copies of the same.

And afterwards and upon, to wit, the 6th day of November, 1905, the same being one of the regular juridicial days of the October, 1905, term of said court, the following order, *inter alia,* was had anentered of record in said court in said cause, which said order is in words and figures as follows, to wit:

3814.

TERRITORY OF ARIZONA, Plaintiff,
vs.
A. R. ENGLISH ET AL., Defendants.

147 It is ordered that this case be set for trial on Wednesday, December 13, 1905, at 9 o'clock a. m.

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And afterwards and upon, to wit, the 13th day of December, 1905, the same being one of the regular ju-dicial days of the October, 1905, term of said court, the following order, *inter alia*, was had and entered of record in said court and in said cause, which said order is in words and figures as follows, to wit:

3814.

TERRITORY OF ARIZONA, Plaintiff,
vs.
A. R. ENGLISH ET AL., Defendants.

This matter came on this day regularly to be heard, S. L. Kingan, Esq., appearing as counsel and John B. Wright, Esq., and William M. Lovell, Esq., appearing as associate counsel for the plaintiff, and W. P. Miller, Esq., appearing as counsel for the defendants.

Whereupon, on application, counsel for the plaintiff was granted leave to amend the complaint herein, by interlineation, and thereupon the matter came on to be heard upon the demurrer of the defendants to the complaint of the plaintiff herein, and upon
148 motion of the plaintiff to strike out portions of the defendant's answer herein. Argument of the respective counsel followed and the said matters being fully submitted to the court, the same were by the court taken under advisement, it being expressly stipulated by counsel for the respective parties hereto, that the decision upon said demurrer and upon said motion be reserved and the said cause be fully submitted to the court.

And afterwards and upon, to wit, the 14th day of December, 1905, the same being one of the regular juridicial days of the October, 1905, term of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

3814.

TERRITORY OF ARIZONA, Plaintiff,
vs.
A. R. ENGLISH ET AL., Defendants.

This cause came on this day regularly for trial before the court sitting without a jury, a trial by jury having been expressly waived by the respective parties in open court, S. L. Kingan, Esq.,
149 appearing as counsel and John B. Wright, Esq., and William M. Lovell, Esq., as associate counsel for the plaintiff, and W. P. Miller, Esq., as counsel for defendants.

Whereupon, the trial proceeded as follows:

The plaintiff to maintain upon its part all issues herein, introduced certain documentary evidence, and called as witnesses, the following named persons, to wit: Frank Treat, who was duly sworn, examined and cross examined. And thereupon the plaintiff rested its case.

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The defendants, to maintain upon their part, the issues herein, introduced certain documentary evidence, and recalled as a witness the following named persons, to wit: Frank Treat, who was further examined and cross examined, and also called as a witness, the following named persons, to wit: Jesse B. Wright and Samuel Hughes, who were duly sworn, examined and cross examined, and thereupon the defendants rested their case.

Plaintiff then in rebuttal, introduced certain documentary evidence and called as a witness, the following named persons, to wit: John B. Wright, who was duly sworn, examined and cross examined: And thereupon the plaintiff rested its case.

There being no further testimony offered on either side,
150 and the evidence being closed, it was ordered that the arguments of said cause be presented in written briefs, that of counsel for plaintiff to be filed by December 28, 1905, and the answering brief of counsel for defendant by January 11, 1906, and the reply brief of counsel for the plaintiff, by January 16, 1906, upon which and at the last mentioned date, the said cause should be considered as fully submitted to the court for its consideration and decision.

And afterwards and upon, to wit, the same date, the following order was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

3814.

TERRITORY OF ARIZONA, Plaintiff,
vs.
A. R. ENGLISH ET AL., Defendants.

It is by the court ordered, that the respective parties herein furnish certified copies of such records of other cases in this court and of all other records and documents introduced in evidence upon
the trial of this case, the originals of which have not been
151 filed herein and such copies to be filed herein by December 28, 1905.

And afterwards and upon, to wit, the 16th day of December, 1905, the same being of the regular juridical days of the October, 1905, term of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

3814.

TERRITORY OF ARIZONA, Plaintiff,
vs.
A. R. ENGLISH ET AL., Defendants.

This matter came on this day regularly to be heard upon the motion of the defendants for leave to reopen their case, for the purpose of offering additional evidence, S. L. Kingan, Esq., appearing as

counsel and John B. Wright, Esq., and William M. Lovell, Esq., as associate counsel for the plaintiff, and W. P. Miller, Esq., for defendants. Argument of the respective counsel was had and said matter being fully submitted to the court and the court being fully advised in the premises, defendants granted said motion; whereupon the defendants to further maintain upon their part the issues
152 herein, recalled as a witness, the following named persons, to wit: Frank Treat, who was further examined and cross examined, and thereupon the defendants rested their case.

Whereupon it was ordered that argument of the respective counsel be presented in written briefs to be submitted to the court for its consideration and decision in accordance with the order of date, Thursday, December 14, 1905.

And afterwards and upon, to wit, the 3d day of February, 1906, the same being one of the regular juridical days of the October, 1905, term of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

3814.

TERRITORY OF ARIZONA, Plaintiff,
vs.
A. R. ENGLISH ET AL., Defendants.

This case having been fully submitted at a previous session of the present term of this court and the court now being fully advised in the premises, it is ordered that judgment be entered herein
153 in favor of the plaintiff and against the defendant, in accordance with the prayer of the complaint herein.

And afterwards and upon, to wit, the 10th day of February, 1906, the same being one of the regular juridical days of the October, 1905, term of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

3814.

TERRITORY OF ARIZONA, Plaintiff,
vs.
A. R. ENGLISH ET AL., Defendants.

This matter came on this day regularly to be heard upon the motion of the defendants to set aside the judgment and grant a new trial herein, S. L. Kingan, Esq., appearing as counsel and John B. Wright, Esq., and William M. Lovell, Esq., appearing as associate counsel for the plaintiff, and W. P. Miller, Esq., for defendants. Argument of the respective counsel was had and the matter being fully submitted to the court and the court being fully advised in the premises, the court overruled said motion, to which ruling

154 of the court in overruling the said motion, the defendants, through their counsel except, and give notice of appeal to the Supreme Court of this Territory.

(Certificate of Allen B. Jaynes, Clerk of the District Court, in due form, on the 27th day of February, 1906.)

Motion for new trial was filed February 7, 1906.

Patent.

United States of America to Sidney R. De Long, Mayor of the Town of Tucson, Pima County, Arizona.

Certificate No. 9.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, Sidney R. De Long, Mayor of the Town of Tucson, Pima County, Arizona, in trust for the several use and benefit of the occupants of the said Town of Tucson, in said county and Territory, according to their respective interests, by virtue of the Act of March 2, 1867, "An Act for the relief of the inhabitants of cities and towns upon the public lands," has deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Prescott, Arizona Territory, whereby it appears that full
155 payment has been made by the said Sidney R. De Long, Mayor as aforesaid, in trust as aforesaid, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled, "An Act making further provision for the sale of the public lands," for all of Sections 12 and 13, in Township 14 South, Range 13 East in the District of Lands *and* subject to sale, at Prescott, Arizona Territory, containing 1280 acres, according to the official plat of the survey of the said lands returned to the General Land Office of the Surveyor-General, which said tracts have been purchased by the said Sidney R. De Long, the Mayor as aforesaid, in trust as aforesaid,

Now know ye, That the United States of America, in consideration of the premises and in conformity with the said Acts of Congress in such cases made and provided, have given and granted and by these presents do give and grant unto the said Sidney R. De Long, Mayor as aforesaid, in trust as aforesaid and to his successors, the said tract above described.

To have and to hold the same, together with all rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said Sidney R. De Long, Mayor as afore-
156 said, in trust as aforesaid, and to his successors and assigns in trust as aforesaid.

No title shall be hereby acquired to any mine of gold, silver, cinnabar or copper or to any valuable mining claim or possession held under existing laws of Congress.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

COPY BOUND C

Given under my hand at the City of Washington, the 1st day of July, in the Year of Our Lord, 1874, of the Independence of the United States the Ninety-eighth.

By the President.

U. S. GRANT, [SEAL.]
By S. A. WALLEAMSON, *Secretary.*

L. K. LIPPENCOTT,
Recorder of the General Land Office.

Minutes of Council, December 30, 1903.

Minutes of the Meeting of the Common Council of the City of Tucson, December 30, 1903.

157 At a special meeting of the Mayor and Common Council of the City of Tucson, held this day in the City Hall, at 7 o'clock p. m., there were present the following members: C. F. Schumacher, Mayor; O. M. Anderson, Councilman; S. Y. Barkley, Councilman; William Reed, Councilman; F. J. Villascusa, Councilman; F. S. Treat, City Clerk.

Councilman P. Contzen, absent.

Councilman P. Heermanns, absent.

The City Clerk stated the object of the meeting to be for the purpose of considering the wedge matter, and to receive the report of special committee appointed by the court in the wedge matter, Block 206.

Resolution No. 99, providing for the payment by the city for the deficiency of $406.00 in the matter of the removal of the wedge, Block No. 207, authorizing the Mayor and City Clerk to issue warrant in payment thereof, was read, and upon motion by Reed, seconded by Villascusa, Resolution No. 99 was passed by the members present voting aye and announced as approved by the Mayor.

Councilman Heermans enters and takes his seat.

158 The report of the committee appointed by the District Court of the First Judicial District of the Territory of Arizona in and for Pima County on the 5th day of December, 1903, in the matter of the removal of Block 206, in the City of Tucson, together with the assessment roll in the total sum of $46,970.88 for the purpose of raising the money to pay for the contemplated improvements, to wit, the removal of Block 206, was read. Moved by Reed and seconded by Heermans, that the report and assessment roll be adopted and confirmed as read, and upon roll call, the vote resulted as follows:

Councilman Anderson votes Aye.

Councilman Barkley votes No.

Councilman Contzen votes Aye.

Councilman Villascusa votes Aye.

Having received four votes in the affirmative, the Mayor announces approved.

Councilman Barkley asked to have his vote recorded No, for the purpose that he asked the matter deferred for a time for further consideration.

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Resolution No. 100, for the purpose of adopting the report and confirming the assessment roll, submitted by the committee or commission appointed by the court in the matter of the removal of the wedge, Block 206, was read.

159 Moved by Anderson, seconded by Reed, that Resolution No. 100 be passed, and upon roll call, the vote resulted as follows:

Councilman Anderson votes Aye.
Councilman Barkley votes No.
Councilman Contzen, Absent.
Councilman Heermanns votes Aye.
Councilman Reed votes Aye.
Councilman Villascusa votes Aye.

Resolution No. 100 having received four votes in the affirmative, the Mayor announces same adopted.

Councilman Barkley asked to have his vote recorded No, for the purpose that he asked the matter deferred for a time for further consideration.

There being no further business before the Council, it was upon motion ordered to stand adjourned.

C. F. SCHUMACHER, *Mayor.*

Attest:
FRANK S. TREAT,
City Clerk.

Minutes of City Council of June 19, 1903.

June 9, 1903, Special Meeting of the Mayor and Common
160 Council of the City of Tucson, held June 9, 1903, at 7 o'clock p. m. Present, C. F. Schumacher, Mayor; O. M. Anderson, Councilman; S. Y. Barkley, Councilman; Philip Contzen, Councilman; Paul Heermanns, Councilman; William Reed, Councilman; F. J. Villascusa, Councilman; N. E. Hawke, City Clerk, pro tem.

Meeting called for the purpose of considering the matters pertaining to the condemnation of Block 206 in the City of Tucson.

The petition for the condemnation of said block, formerly filed April 8, 1901, with additional signatures thereon, was read, and proposed Ordinance No. 168, providing for the altering and widening of Congress Street, be-ween Church Street and Court Street, of the City of Tucson, was read first time by the City Clerk. On motion of Reed, seconded by Contzen, the proposed ordinance was read the second and third time by title and placed on its final passage. On its final passage the roll was called and resulted as follows:

Anderson voted Aye.
Barkley voted Aye.
Contzen voted Aye.
Heermanns voted Aye.
Reed voted Aye.
Villascusa voted Aye.

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161 The Mayor announced Ordinance No. 168, passed and approved. Council, on motion, adjourned.

Approved.

C. F. SCHUMACHER, *Mayor.*

Attest: N. E. HAWKE,
City Clerk, Pro Tem.

Ordinance No. 168.

Providing for Altering and Widening Congress Street, between Church Street and Court Street, in the City of Tucson, Arizona.

Whereas, a petition has been filed with the City Recorder of the City of Tucson, signed by the owners of a majority of the lineal frontage of Block 206 in said city, praying that proceedings be taken to condemn that part of the property in Block 206 and that the land embraced therein be thrown open as a street and thoroughfare and made a part of Congress Street, and that the same be made by special assessment; and

Whereas, it is necessary to condemn the said Block 206 and all thereof for public use, for the purpose of widening and improving Congress Street, between Church Street and Court Street.

162 Now therefore, be it ordained by the Common Council of the City of Tucson, as follows:

SECTION 1. That Congress Street, between Church Street and Court Street, in the City of Tucson, Arizona, be opened and widened so as to include all of the land now lying in Block 206 of the said city, bounded on the east by Church Street, on the south by Congress Street, on the west by Court Street and on the north by Maiden Lane.

SECTION 2. Be it further enacted that it is necessary to widen the said Congress Street, between the limits above described, and to condemn said Block 206 and all thereof for said purpose of so widening Congress Street.

SECTION 3. That proceedings be at once instituted by the proper officials of this city, for the purpose of having the said premises and the improvements thereon condemned and for making just compensation therefor, to the end that the legal right and title to remove said improvements and convert the said described lands to public use, shall vest in this city.

SECTION 4. That all that part of Maiden Lane lying between Church Street on the east and Court Street on the west and all of the premises described in Section 1, to be condemned and re-

163 moved and the improvements thereon, shall become a part of said Congress Street for public use.

SECTION 5. All costs, damages and expenses incurred in carrying out the provisions of this ordinance, shall be defrayed by special assessment to be levied upon the singular lots, tracts and parcels of land within this city, that shall be benefited by the said improvements, in the proportion in which they will be severally benefited by such improvements.

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SECTION 6. This ordinance shall be in effect from and after its passage and approval.

SECTION 7. All ordinances and parts of ordinances in conflict with this ordinance, are hereby repealed.

Passed and adopted by the Mayor and Common Council of the City of Tucson, this 19th day of June, 1903.

Approved June 19, 1903.

C. F. SCHUMACHER, *Mayor.*

Attest: N. E. HAWKE,
Ex Officio County Clerk, Pro Tem.

164 PLAINTIFF'S EXHIBIT B 1.

Power of Attorney.

JUNE 12, 1903.

Know all men by these presents, *H*hat Rochester Ford, of Tucson, Pima County, Territory of Arizona, has been and hereby is appointed my true and lawful attorney in fact, for me in my name, place and stead, to petition the City Government of the City of Tucson, aforesaid, for the condemnation and removal of Block 206, "Lower Wedge," of said city, and also for the condemnation and removal of all property in said city west of Court Street therein, lying between Congress Street and Maiden Lane, in said city.

To do and perform each and every act and thing whatsover requisite or necessary, in order to accomplish the end above indicated as desired.

Possessing full power and authority to this end and as fully and as completely as I might or could do, if personally present.

Witness my hand and seal, this day and date herein first above written.

ALLEN R. ENGLISH. [SEAL.]

165 Copy of deed offered in evidence by the defendant, between Charles F. Schumacher, Mayor of the City of Tucson, Arizona, Trustee, and the Common Council thereof, as party of the first part, and B. Hattich, of the city of Tombstone, Arizona, party of the second part, to which offer the plaintiff objected and which objection was by the court sustained and which said deed was thereupon filed as part of the record herein.

Deed Proper 1258.

This indenture, made and executed on the 6th day of July, 1904, by and between Charles F. Schumacher, Mayor of the City of Tucson, Arizona, Trustee, and the Common Council thereof, for and on behalf of the said Trustee and the said City of Tucson, in Pima County, Territory of Arizona, party of the first part, and B. Hattich, of the City of Tombstone, Cochise County, Arizona, party of the second part, witnesseth:

That for and in consideration of the sum of One Dollar in hand

COPY BOUND C

paid to the said party of the first part by the said party of the second part, the receipt whereof is hereby acknowledged and for the further consideration specifically set forth in Resolution No. 108 of the said City of Tucson, passed and approved by the Mayor
166 and Common Council on the 5th day of July, 1904, the said party of the first part has bargained, sold and conveyed, and by these presents does bargain, sell and convey, unto the said party of the second part and to his heirs and assigns forever, all that certain piece or parcel of land situate, lying and being in the said City of Tucson, and particularly described as follows, to wit: Commencing at the S. W. corner of Lot No. 3, in Block No. 197, according to the official map and survey of said city, made and executed by S. W. Foreman, run thence southerly along the east line of Court Street 42.88 feet to a point; run thence easterly 55.33 feet to a point; run thence northerly 38.25 feet to the S. E. corner of said Lot 3; run thence westerly along the south line of said Lot 3, as heretofore surveyed by the said S. W. Foreman, 55.02 feet to the place of beginning. Said property being shown upon a lot or Block 197, approved by the Mayor and Common Council of the City of Tucson, on the 5th day of July, 1904, and being the property conveyed to the said party of the first part for the purpose of straightening Congress Street in the City of Tucson, and making the same of the uniform width of 80 feet throughout its entire length.

167 To have and to hold all and singular said premises, together with the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

In Witness Whereof, the said party of the first part has caused these presents to be executed by resolution duly passed by the Mayor and Common Council of the said City of Tucson on the 5th day of July, 1004, and the corporate seal of the said city hereto affixed, on the day and year first above written.

C. F. Schumacher, Mayor of the City of Tucson, Arizona, Trustee.

[SEAL.] C. F. SCHUMACHER, *Mayor.*

Attest: FRANK S. TREAT,
Recorder and Ex-Officio City Clerk.

Report of James Flynn, City Assessor and ex Officio Tax Collector, Delinquent Special Assessment, City of Tucson, for the Removal of Block 206.

Taxpayer's name.	Lot.	Block.	Total taxes.
English, Allen R.....	5	197	$12,533.75
Nave, O. J.....	1	197	900.00
Mates, Louisa M.....	2	197	700.00
Brady, R. G.....	3	211	850.00
Sanford, L. J.....	5	190	135.00
Pima County.....	3, 4	192	500.00

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168 *Summary.*

Second assessment for removal of block 207.....	$461.00
Grading Third Street, between Eighth and First Avenues.	401.98
Grading Fourth Street, between Third and Sixth Avenues.	150.47
Widening of Congress Street, between Court and Pearl Streets..	3,542.00
For removal of block 206.....	15,618.75
	$20,174.20

I, James Flynn, City Assessor and *Ex-Officio* Tax Collector of the City of Tucson, hereby certify that the foregoing is a true and correct report of the lands town lots and real property on which the special assessments levied by the authority of the City of Tucson, remain due and unpaid; that I am unable to collect the same or any part thereof, and that I have given the notice required by law; that said warrant has been received by me for collection; also find attached warrant for the collection of the same.

JAMES FLYNN,
City Assessor and Ex Officio Tax Collector.

169 Subscribed and sworn to before me this 21st day of December, 1904.

[SEAL.] FRANK S. TREAT, *Recorder.*

Warrant for Collection of Special Assessment and Taxes.

To James Flynn, Esq., Collector of Taxes in and for the City of Tucson, Pima County, Territory of Arizona, Greeting:

You are hereby authorized and directed according to law and the ordinances of the City of Tucson, and particularly Ordinance No. 168, entitled, "Providing for the widening of Congress Street, between Church Street and Court Street, in the City of Tucson, Arizona, by the removal of Block 206;" which said ordinance was passed and adopted and duly approved on the 19th day of June, 1903, to collect, within thirty days from the day of the receipt of this warrant by you, in manner and form as hereinafter specified, all and singular the special assessment and taxes levied against all and singular the special assessment and taxes levied against all and singular those parts of land with the improvements thereon, to be benefited by the widening of Congress Street, as contemplated by said ordinance, all of which said properties are respectively set forth,
170 designated and described, together with the names of the owners thereon in the amended and modified assessment roll of the special assessment committee appointed by the District Court of the First Judicial District of the Territory of Arizona in and for Pima County, filed December 30, 1903, and adopted by the Mayor and Common Council of the City of Tucson, December 30, 1903, a copy of which said amended assessment roll as confirmed by the Common Council is herewith delivered.

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Will you therefore proceed forthwith, according to law and said ordinance, to make collection of the said special assessment and taxes as hereinafter particularly described, and all moneys so collected by you, you will at once pay over to the Treasurer of the City of Tucson, taking the receipt of the said Treasurer therefor.

You will make all and singular of the said collections as hereinafter specified, so far as possible within thirty days of the date of the receipt by you of this warrant, and in case you shall fail to collect any of said special assessments so assessed and levied, you will report the same to the Mayor and Common Council of the
171 City of Tucson at the expiration of the thirty days of the receipt by you of this warrant.

You will further take notice, that the said special assessments are to become due and payable in five equal installments, the first installment to be due and payable within thirty days from the date of this warrant, as aforesaid; the balance of the installments to become due and payable in four equal installments each year thereafter and as provided in Ordinance No. 181 of the City of Tucson, passed and adopted on the 13th day of February, 1904; deferred installments shall bear seven per cent. interest, which you will also collect at the times and dates as they become due.

You are further notified that within thirty days from the date of these presents, any party assessed may pay the entire amount of his assessment and thus be relieved from paying the annual installments and interest thereon.

From and after the thirty days from the date of this warrant, you will not extend the privilege of paying the entire assessment to any one, but the said assessments must be paid in installments as herein provided.

Hereof fail not.

172 Done in the City of Tucson, this 15th day of February, 1904.

[SEAL.] C. F. SCHUMACHER, *Mayor.*

Attest: FRANK S. TREAT,
Recorder and Ex Officio City Clerk.

TERRITORY OF ARIZONA, *County of Pima, ss:*

I, John W. Bogan, Treasurer and Ex-officio Tax Collector of Pima County, Arizona, do hereby certify that the attached and foregoing report in writing, of James Flynn, City Assessor and Ex-officio Tax Collector of the City of Tucson, Arizona, to me, the said John W. Bogan, the general officer of the said County of Pima, authorized by the General Revenue Laws of the said Territory to sell for taxes due said County and Territory, of all the lands, town lots and real property on which the said James Flynn has been unable to collect special assessments of said city, and that the warrant authorizing the said James Flynn to collect said special assessments also attached hereto and accompanying said report and that the oath of said James Flynn, Tax Collector as aforesaid; that the said list or

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report is a correct report and return of said lands, town lots
173 and real property on which special assessments levied by the authority of the said City of Tucson, also attached hereto, are true, full and correct copies of said report, warrant and oath, now on file in my office, and I do further certify that said report, warrant and oath, were together filed in my office by the said James Flynn, on the 21st day of December, 1904.

In witness whereof, I have hereunto set my hand and attached my official seal this 8th day of June, 1905.

[SEAL.] JOHN W. BOGAN,
Treasurer and ex-Officio Tax Collector,
Pima County, Arizona.

174 PLAINTIFF'S EXHIBIT H.

In the District Court of the First Judicial District of the Territory of Arizona in and for Pima County.

CITY OF TUCSON, Plaintiff,
vs.
LIZZIE J. WOODS ET AL., Defendants.

DECEMBER 3, 1904.

Testimony of O. M. Anderson.

Q. How long have you lived in Tucson?
A. A little over five years.
Q. Are you acquainted with the value of real estate in the City of Tucson?
A. Yes, sir.
Q. Are you acquainted with Block 206 in the City of Tucson?
A. Yes, sir.
Q. Have you made an examination of that property?
A. I have.
Q. Do you know the different owners of the property in that block?
A. Yes, sir.
Q. Do you know what the values of that real estate are, the amount and improvements of the different owners of that block?
A. Yes, sir.
Q. What has been your business?
A. Contractor and builder.
175 Q. Have you had anything to do with real estate in this city?
A. Yes, sir.
Q. What is the value of lot 1 in Block 206, beginning at the northeast corner of said lot, thence south 39.6 feet; thence south 83.2 degress west, 42.42 feet; run thence north to the northerly line of said lot; thence to the beginning, being the property of the estate of W. P. Woods, deceased? Do you know that piece of property?

A. Yes, sir.

Q. What, in your opinion, is the value of that property?

By the COURT: What was it valued at at that time, on July, 1903?

A. $8,500.00.

Q. Do you know the property owned by Ziegler, described as the west half of lot one and part of lot two, in said block, the 6th of July?

A. Yes, sir.

Q. What, in your opinion, was the value of that property on July 6, 1903?

A. About $9,500.00.

Q. Do you know the property belonging to Fannie Lezinsky, being part of lot two, now known as lot nine?

176 A. Yes, sir.

Q. What, in your opinion, was the value of that property on July 6, 1903?

A. About $13,500.00.

Q. Do you know Mr. Culver's property, being lots five, six and seven, in block 206?

A. Yes, sir.

Q. What, in your opinion, is the value of that property owned by Mr. Culver, in that block, as existed on July 6, 1903?

A. About $14,500.00.

Q. Now, do you know McNeil and O'Keefe, who have the saloon?

A. Yes, sir.

Q. Have you ever seen, or do you know their lease in that premises?

A. Yes, sir; I do.

Q. What, in your opinion, was the value of that lease on July 5, 1903?

A. Well, I should say $500.00.

TERRITORY OF ARIZONA, *County of Pima, ss:*

I, Francis M. Hartman, do hereby certify that on December 3, 1903, I was the Official Court Reporter of the District Court
177 of the First Judicial District of the Territory of Arizona in and for Pima County; that I was present in court on said day and took down in shorthand the testimony of O. M. Anderson, given in the above entitled cause; that I have this day transcribed the same and that the foregoing is a full, true and correct transcript of said testimony.

Given under my hand this 14th day of December, 1903.

FRANCIS M. HARTMAN,
Ex-Official Court Reporter.

178 PLAINTIFF'S EXHIBIT I.

Complaint in No. 3173. Order of Dismissal.

In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

CITY OF TUCSON, Plaintiff,
vs.
W. P. WOODS ET AL., Defendants.

Plaintiff complains and for cause of action alleges:

I.

That it is a municipal corporation, duly organized, incorporated and existing under the laws of the Territory of Arizona and the agent of the Territory in charge of the public use for which the property hereinafter described is sought. That said, The Abstract and Title Guaranty Company, is a corporation, duly organized; that the defendants, Fannie Lezinsky, Julius Lezinsky, her husband; William Zeckendorf, Louis Zeckendorf, Henry Lezinsky and Charles Lezinsky, are residents of the City of New York, State of New York; that the defendant, John P. Woods and H. Lowenstein, are residents of the City of Los Angeles, State of California.

II.

179 That the defendant, W. P. Woods, is the owner of the easterly half of lot one, in Block 206, of the City of Tucson. * * * That P. B. Zeigler is the owner of the west half of lot one and part of lot two, in block 206, in the City of Tucson. * * * That Fannie Lezinsky is the owner of part of lot two, of lots three and four, in block 206, in the City of Tucson. * * * That said John P. Culver is the owner of lots five, six and seven, in block 206, in said city. * * *

III.

That heretofore, to wit, on the 28th day of August, 1901, the Mayor and Common Council of the City of Tucson passed an ordinance, entitled, Ordinance 151, providing for altering and widening Congress Street, from Church Street and Pearl Street in the City of Tucson, Arizona, by which it was ordained as follows:

SECTION 1. Congress Street, between Church Street and Pearl Street in this city, be opened and widened, so as to include all of the land now lying in block 206 of the said city, bounded on the east by Church Street, on the south by Congress Street, on the west by Court Street, on the north by Maiden Lane, and so as to include also a part of Block- No. 199 and 201 and 202, fronting on Congress Street, being a strip off the southerly portion of said blocks
180 to the uniform depth throughout between the said Court Street and the said Pearl Street of 39½ feet, measured in a

northerly direction at right angles to the property line of said Congress Street. * * *

The plaintiff further alleges that the property hereinabove described, embraces all the land within the limits of the said block 206 and a portion of the land embraced in the southerly portion of the several lots and blocks fronting on Congress Street, between Court Street and Pearl Street. * * *

And the said plaintiff brings this action to have all and singular the said lots, parcels and tracts of land and portion thereof, herein described, condemned for the conversion thereof to public use, pursuant to said Ordinance No. 151.

Wherefore plaintiff prays that the improvements on and an easement in all of the said property hereinbefore described, be condemned for the public use aforesaid, and for all proper orders in the premises.

ROSCOE DALE,
City Attorney.
ROCHESTER FORD,
Of Counsel for Plaintiff.

181 In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

No. 3173.

CITY OF TUCSON, Plaintiff,
vs.
W. P. WOODS ET AL., Defendants.

This cause having been continued from yesterday's session, come now into open court the same parties hereto, and now the plaintiff, to sustain upon its part, the issues submitted to the court, offered herein certain documentary evidence.

Therefore, on motion of plaintiff, it is by the court ordered that this cause be and the same is hereby dismissed.

Wherefore, it is further ordered that the defendants recover from the plaintiff, their costs incurred in this action and judgment is ordered entered accordingly.

182 PLAINTIFF'S EXHIBIT A.

In the District Court of the First Judicial District of the Territory of Arizona in and for Pima County.

No. 3409.

CITY OF TUCSON, Plaintiff,
vs.
LIZZIE J. WOODS ET AL., Defendants.

It is stipulated for a valuable consideration, by and between the parties hereto, as follows:

Whereas, the District Court in the above entitled cause, has decided that necessity exists for the removal of block 206 of the City of Tucson, Arizona; and

Whereas, the expense of a trial by jury to ascertain the value or damages to be assessed to the various owners of property as shown by the complaint herein, would consume much time and be a great expense to redeem herein,

Therefore, and by reason of the matters and things aforesaid, it is agreed that the values and damages assessed for the condemnation of the lots in block 206, shall be found by the court as follows:

The value and damages for the condemnation of the property belonging to the estate of W. P. Woods, deceased, from the 6th day of July, 1903, shall be found by the court in the sum of $8,500.00.

183 The value and damages by reason of the said condemnation of the property of P. B. Ziegler on said date, in said block shall be in the sum of $9,500.00.

That the value and damages for the condemnation of lots belonging to John P. Culver in said block, on said date, shall be in the sum of $14,500.00.

That the value and damages for the condemnation of the property belonging to the Lezinskys in said block on said date, shall be in the sum of $13,500.00.

And that the value of the lease of McNeil & O'Keefe, in said block on said date, shall be found in the sum of $500.00.

And it is further stipulated that the plaintiff shall have ninety days from the 4th day of December, 1903, in which to pay the sums of money aforesaid for the use of the various owners and lessees in this court, and that the tenants occupying the said block shall have thirty days thereafter in which to vacate the same.

And it is further stipulated that the rents from the said premises are to be paid to the owners of the respective lots for the period of ninety days from the said 4th day of December, 1903,

184 unless the plaintiff shall have paid the respective sums hereinabove mentioned into this court at an earlier date and then up to that date only; that, after the said period of ninety days shall have expired, the said tenants are to deed the said lands to the plaintiff herein, and if said payments be not made within ninety days, then the court shall under this stipulation set aside and annul said judgment and the entire proceedings, as though said money cannot be made on execution.

JOHN B. WRIGHT,
SAMUEL L. KINGAN,
Attorneys for Plaintiff.
OWEN T. ROUSE,
Attorney for Lizzie P. Woods and John Brown, Executors.
SMITH & IVES,
Attorneys for P. V. Ziegler and O'Keefe & McNeil.
SELIM M. FRANKLIN,
Attorney for John P. Culver and Fannie and Julius Lezinsky.

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Endorsed December 4, 1903, at — o'clock, — M.
CLINTON D. HOOVER, *Clerk*,
By L. D. DAVIS, *Deputy*.

185 In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

CITY OF TUCSON, Plaintiff,
vs.
LIZZIE J. WOODS ET AL., Defendants.

Complaint.

John B. Wright, City Attorney.
Rochester Ford, of Counsel for Plaintiff.

Plaintiff complains and for cause of action alleges:

That it is a municipal corporation, duly organized, incorporated and existing under the laws of the Territory of Arizona, and the agent of the Territory in charge of the public use for which the property hereinafter described is sought; that the defendants, Fannie Lezinsky and Julius Lezinsky, her husband, are residents of the City of New York, and State of New York; that the defendant, John P. Culver, is a resident of the City of Los Angeles, State of California; that all of the defendants above named are residents of the City of Tucson, County of Pima, and Territory of Arizona. * * *

IV.

That heretofore, to wit, on the 19th day of June, 1903, the Mayor and Common Council of the City of Tucson, passed an ordi-
186 nance entitled, Ordinance No. 168, providing for altering and widening Congress Street, between Church Street and Court Street, in the City of Tucson, Arizona, by which it was ordained as follows. (Here follows Ordinance No. 168.)

Plaintiff further alleges that the property hereinbefore described embraces all the lands within the limits of said Block 206. * * * That the said plaintiff brings this action to have all and singular the said lots, parcels and tracts of land and portions thereof herein described, condemned for the conversion thereof to public use, pursuant to such Ordinance No. 168, and its powers and right to so widen said Congress Street to public use and it avers that the taking of the several lots and parcels of land hereinbefore described, is necessary to such public use, and that the Mayor and Common Council of the said City of Tucson have heretofore determined that the widening of said Congress Street, as provided for by said ordinance, is an improvement necessary for the public interest and advantage; that, before said ordinance was passed, a petition for the making of the improvement therein ordered made, signed by the owners of a majority of the lineal frontage upon the improvement in such ordinance made, was filed with the City Recorder of the City of
186½ Tucson, as set forth in said ordinance.

Wherefore plaintiff prays, that the improvements on and

an easement in all of said property hereinabove described, be condemned for the public use aforesaid, and for all proper orders in the premises.

JOHN B. WRIGHT,
City Attorney.
ROCHESTER FORD,
Of Counsel for Plaintiff.

The foregoing complaint, among other things, describes the several lots in block 206, an easement in which was sought to be condemned.

Numerous answers to this complaint are contained in the record, which are not included in this abstract, because not deemed material to any questions involved upon appeal herein.

187 In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

No. 3409.

CITY OF TUCSON, Plaintiff,
vs.
LIZZIE J. WOODS ET AL., Defendants.

Comes now the City of Tucson, the plaintiff above named and in the above proceedings, files its supplemental petition, praying this Honorable Court to cause an assessment to be made for the purpose of raising the amounts necessary to pay the compensation and damages which have been awarded to the property taken or damaged, with costs of the proceedings in the above entitled cause, and said plaintiff, in support of said motion, shows that on the 6th day of July, 1903, the said City of Tucson instituted the above entitled suit to condemn lots one, two, three, four, five, six and seven, including that part of lot two now known as lot nine, in Block No. 206, in the said City of Tucson, the same constituting all of said block according to the official surveys, field notes and plats of the said city, for the purpose of widening Congress Street, between Church Street and Court Street, in the said City of Tucson, pursuant to an ordinance passed by the Mayor and Common Council of said city on
188 the 19th day of June, 1903, entitled, Ordinance No. 168, providing for altering and widening Congress Street, between Church Street and Court Street, in the City of Tucson, Arizona, and provided further as follows:

SECTION 5. All costs, damages and expenses incurred in carrying out the provisions of this ordinance shall be defrayed by special assessment to be levied upon the several lots, blocks, tracts and parcels of land within this city, that shall be benefited by the said improvement in the proportion in which they will be severally benefited by said improvement.

Your petitioner further represents that the damages resulting to the owners of the property in said Block 206, which owners and the

particular descriptions of property owned by them are severally set forth in the complaint of the plaintiff filed herein and hereby referred to for certainty, by the judgment of this court, including the damages to all parties having leasehold or other interests therein, amounts to the sum of $46,500.00, and that the probable costs for the final determination and completion of the removal of said block, including the costs of this court, will amount to the sum of $1,000.00, in addition thereto.

189 Therefore, your petitioner, the plaintiff herein, prays for and on behalf of the said City of Tucson, that this Honorable Court cause an assessment to be made for the purpose of raising the amounts necessary to pay the compensation and damages to the property taken or damaged by reason of the above entitled action and in the amounts herein alleged or any act or thing incident to the carrying out of the said above entitled action, together with all costs of the proceedings, in accordance with the provisions of paragraph 496 of the Revised Statutes of Arizona of 1901, the same being also Section 30 of the Acts of the Legislative Assembly of the Territory of Arizona, passed March 18, 1897, and being Act No. 58 of the Nineteenth Assembly of the said Territory and amendments thereto.

And hereof your petitioner will ever pray.

JOHN B. WRIGHT AND
S. L. KINGAN,
Attorneys for Plaintiff.

190 In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

No. 3409.

CITY OF TUCSON, Plaintiff,
vs.
LIZZIE WOODS ET AL., Defendants.

Now, on this 5th day of December, 1903, the above named plaintiff, having heretofore filed in this case a supplemental petition, praying the court to cause an assessment to be made for the purpose of raising the amounts necessary to pay the compensation and damages awarded to the owners and occupants of lots one, two, three, four, five, six and seven, including that part of lot, now known as lot nine, in Block 206, in the City of Tucson, Arizona, being all of said block, according to the official survey thereof, and

It appearing to the court from the records in the above said cause, that the said compensation and damages to the said owners and occupants of said lots is to be defrayed by special assessment to be levied upon the several lots, blocks, tracts and parcels of land to be benefited in the said City of Tucson, as provided for by an ordinance entitled, "Ordinance No. 168, providing for altering and
191 widening Congress Street between Church Street and Court Street, in the City of Tucson, Arizona," which said ordinance

was duly passed, adopted and approved on the 19th day of June, 1903, and .

It further appearing to the court that a petition, signed by the owners of the majority of the lineal frontage upon the improvement contemplated and ordered made by said Ordinance No. 168, was filed with the City Recorder of the said City of Tucson, before the adoption and approval of said ordinance; and

It further appearing to the court, that the damages to be assessed, including all future costs to be incurred, amounts to the sum of $46,500.00; it is now

Ordered by the court, that John W. Bogan, James Flynn and H. H. Pilling, residents of said County of Pima, be and are hereby appointed as commissioners to make an assessment for the purpose of raising the amounts necessary to pay the compensation and damages which have been awarded in the said cause, according to the verdict duly recorded therein and to ascertain as nearly as may be, the costs incurred at the time of this appointment and the probable further costs of the proceedings, included therein, an estimate of
the costs of making and collecting said assessment; and to
192 include all such costs in the sum total of such assessment and
to examine the locality of said Block 206, in the City of Tucson, and the lots, blocks, tracts and parcels of land which shall be benefited by the removal of the improvements upon said Block 206 and the widening of Congress Street contemplated and ordered by said Ordinance No. 168 of the said City of Tucson, and an estimate of the proportion of the total cost of the proposed improvement will be of benefit to the public, if any, and what proportion thereof will be a benefit to the property benefited, if any, and apportion the same between the said City of Tucson, if the said City of Tucson shall be benefited, and such property so benefited, so each shall have its relative equitable proportion, and having found such amounts, to apportion and assess such amounts so found to be a benefit to the property upon said lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement, but no lot, block, tract or parcel of land shall be so assessed in a greater amount than it will be actually benefited. Also, to make the cost to be made in an assessment roll, in which shall appear
the names of the owners, so far as known, and a description
193 of the block, lot, tract or parcel of land, and the amount
assessed as a benefit thereto, and to set down as against the said City of Tucson the amount, if any, that shall have been found as public benefit, and certify such assessment roll to the Common Council of the said City of Tucson, within at least thirty days from this date; said commissioners shall fix a time and place when and where they will meet to consider and decide upon the assessment, and shall give notice thereof to each owner of premises to be assessed, and whose names and places of residence *is* known to them, or which, upon diligent inquiry, can be ascertained, of the time and place of their meeting, and shall afford an opportunity to all persons interested in the real estate to be benefited by such improvement, to appear and be there with such witnesses as they may produce and in

all matters and things touching the duties of said commissioners they shall observe and be controlled by the laws of the Territory of Arizona, the said ordinance of the said City of Tucson, No. 168, and this order, and shall certify said assessment roll when the same shall finally be found to be correct with all the testimony, if any taken by them, to the said Common Council of the said City
194 of Tucson, as required by law, and to abide the further order of this court.

GEORGE R. DAVIS, *Judge.*

195 In the District Court of the First Judicial District of the Territory of Arizona in and for Pima County.

No. 3409.

CITY OF TUCSON, Plaintiff,
vs.
LIZZIE J. WOODS ET AL., Defendants.

This cause coming on to be heard on the 2d day of December, 1903, before the court, without a jury, a jury having been expressly waived by the parties hereto in the said cause, the plaintiff, the City of Tucson, asked to have condemned as an easement, certain lands specifically described in the complaint herein and being Block 206 in said City of Tucson, according to the official survey of said city, the same being the property of the estate of W. P. Woods, deceased, and in the possession of Lizzie J. Woods and John M. Brown, executors of the last will of the said W. P. Woods, deceased, and P. B. Ziegler, Fannie Lezinsky and John P. Culver, and to have condemned also any right, title and interest of the other defendants in said cause named as lessee, or otherwise, in said lands, or any part thereof, and the value of said lots on the 6th day of July, 1903, and the damages for the condemnation thereof having been assessed by said court in the following manner, to wit: The property
196 owned by the said estate of W. P. Woods, deceased, and being that part of lot one, in Block 206, as specifically described in said complaint and paragraph 3 thereof, in the sum of $8,500.00; the property of the defendant P. B. Ziegler, for the west half of lot one, and part of lot two, in said Block 206, as specifically described in said complaint, in the sum of $9,500.00; the property of Fannie Lezinsky, being a part of lot No. 2, now known as Lot No. 9, and all of lots three and four in said Block 206, in the sum of $13,500.00; the property of John B. Culver, being lots five, six and seven, in Block 206, as specifically shown in said complaint, in the sum of $14,500.00; and the value of a leasehold interest of William A. McNeil and E. O'Keefe, in the sum of $500.00; and said finding of the court being received and entered and the court being now fully advised in the premises, it is considered and adjudged that the several sums awarded to the said parties as hereinabove described to the owners of the various lots and parts of lots in Block 206, are a just compensation to the owners thereof for the taking of an easement in said lots for the proposed public improvement mentioned in said

complaint and the said owners are to accept from said City of
197 Tucson, said sums so awarded, and the said McNeil and O'Keefe shall accept the sum of $500.00, and it further appearing to the court that for a valuable consideration it has been stipulated by the parties herein, that the plaintiff, the City of Tucson, shall have ninety days from the 4th day of December, 1903, in which to arrange for a money payment to the clerk of this court and for said defendants, the several amounts herein found to be due them, and that the plaintiff for a valuable consideration, has stipulated and agreed that the tenants residing on said lots, in said Block 206, as the same are now being occupied or may hereafter during said period of ninety days, as aforesaid, occupy the said lots or any parts thereof, shall not be disturbed in their peaceable possession thereof until thirty days after the ninety days herein provided for.

It is ordered, adjudged and decreed, that he plaintiff herein, shall be allowed ninety days from the date hereof to raise and deposit with the clerk of this court the various amounts found due as damages for the condemnation of the property of the owners aforesaid, and that the tenants now residing or hereafter residing in
198 said lots or parcels thereof during the period of ninety days, as aforesaid, shall be allowed thirty days from and after the expiration of the said ninety days herein referred to, in which to vacate the said premises, and that each party herein shall pay its own costs.

Done in open court, this 4th day of December, 1903.

GEORGE R. DAVIS, *Judge.*

199 PLAINTIFF'S EXHIBIT G.

In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

No. 3409.

CITY OF TUCSON, Plaintiff,
vs.
LIZZIE J. WOODS ET AL., Defendants.

This cause coming on to be heard this 2d day of December, 1903, before the court, sitting without a jury, a jury having been expressly waived by the parties hereto, and the evidence in said case having been submitted and the case argued by respective counsel, the court now finds the following facts: * * *

And as conclusions of law from the said facts, the court finds that the plaintiff has done each and all of the things necessary for the condemnation of said Block No. 206; that necessity exists for the said improvement; that the said improvement is for the public use; that the defendants are entitled to the damages as hereinabove stated, and that the plaintiff is entitled to the remedy prayed for in its complaint.

Done in open court, the 4th day of December, 1903.

GEORGE R. DAVIS, *Judge.*

200 PLAINTIFF'S EXHIBIT B.

In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

No. 3409.

CITY OF TUCSON, Plaintiff,
vs.
LIZZIE J. WOODS ET AL., Defendants.

This cause having been continued from yesterday's session, come now into open court the same parties hereto and the trial of said cause proceeds as follows:

The plaintiff, to further maintain upon its part the issues heretofore submitted to the court, calls as witnesses the following named persons, to wit, F. C. Norton, Ezra C. Bartlett, W. J. Corbett, L. M. Jacobs, D. J. Bolen and Samuel Barkley, who were duly sworn, examined and cross examined. Whereupon the plaintiff rested its case as to said issues. The defendants then, to maintain upon their part said issues, call as a witness, Frank S. Treat, who is further examined and cross examined, and introduce certain documentary evidence, and thereupon rest their case as to said issues. And now, the demand for a jury in this case having been withdrawn, it is agreed by and between all of the parties hereto, that all of the issues
201 herein, including the value of the interests of the defendant- in the property sought to be taken, be submitted to the court. Thereupon plaintiff called as a witness, O. M. Anderson, who was duly sworn, and examined and rested its case. There being no further testimony offered on either side, and the evidence being adduced, the cause was fully submitted to the court for consideration and decision, and now the court being fully advised in the premises, orders judgment to be entered herein in accordance with the stipulation, findings and judgment signed and filed herein.

TERRITORY OF ARIZONA, *County of Pima, ss:*

I, Clinton D. Hoover, clerk of the above entitled court, do hereby certify the above and foregoing to be a true, perfect and complete copy of an order of the above entitled court entered in the above entitled case, on the 3d day of December, 1903, as the same appears of record in my office.

CLINTON D. HOOVER,
Clerk as Aforesaid,
By ALLEN B. JAYNES, *Deputy.*

202 *Minutes of Meetings Held by Committee, December* 8, 1903.

Copy of the following order, appointing Commissioners to ascertain the benefits received by properties from the removal of Block 206, having been served by the Clerk of the District Court upon

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J. W. Bogan, James Flynn and Dr. H. H. Pilling, which copy is, in words and figures, as follows:

In the District Court of the First Judicial District, Territory of Arizona, in and for Pima County.

No. 3409.

CITY OF TUCSON, Plaintiff,
vs.
LIZZIE J. WOODS ET AL., Defendants.

Order Appointing a Commission.

And now on this 5th day of December, 1903, the above named plaintiff having heretofore filed in this case a supplemental petition praying the Court to cause an assessment to be made for the purpose of raising the amounts necessary to pay the compensation and damages awarded to the owners and occupants *to* Lots 1, 2, 3, 4, 5, 6 and 7, including that part of Lot 2 now known as Lot 2, in Block No. 206, in the City of Tucson, Arizona, being all of said
203 block according to the official survey thereof; and

It appearing to the Court from the records of the above stated cause that the said compensation and damages to the said owners and occupants of said lots is to be defrayed by special assessment to be levied upon the several lots, blocks, tracts and parcels of land to be benefited, in said City of Tucson, as provided for in ordinance entitled, "Ordinance No. 168, providing and altering and widening Congress Street between Church Street and Court, in the City of Tucson, Arizona," which said ordinance was duly passed and adopted and approved on the 19th day of June, 1903; and

It further appearing to the Court that a petition signed by the owners of the majority of the lineal frontage upon the improvement contemplated and ordered made by said Ordinance No. 168, was filed with the City Recorder of the City of Tucson, before the adoption and approval of said ordinance; and

It further appearing to the Court that the damages to be assessed, including all future costs to be incurred, amounts to the sum of Forty-six Thousand Five Hundred Dollars,

It is now ordered by the Court that John W. Bogan,
204 James Flynn and Dr. H. H. Pilling, residents of said County of Pima, be and are hereby appointed as Commissioners to make an assessment for the purpose of raising the amounts necessary to pay the compensation and damages which have been awarded in the said cause according to the verdict duly recorded therein, and to ascertain as near as may be the costs incurred at the time of this appointment and the probable further costs of proceedings, including therein an estimate of the costs of making and collecting such assessment; and to examine the said locality of said Block 206, in the City of Tucson, and the lots, blocks, tracts and parcels of land which shall be benefited by the removal of the im-

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provements upon said Block 206, and the widening of Congress — contemplated and ordered by said Ordinance No. 168 of the said City of Tucson; and to estimate what proportion of the total cost of the proposed improvement will be of benefit to the property benefited, if any, and apportion the same between the said City of Tucson, if the said City of Tucson shall be benefited, so that each shall have its relative equitable proportion; and, having found such amounts,
to apportion and assess such amounts so found to be of benefit
205 to the property, upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement; but no lot, block, tract or parcel of land shall be so assessed in a greater amount than it will be actually benefited. Also to make or cause to be made an Assessment Roll in which shall appear the names of the owners, so far as known, and a description of each block, lot, tract or parcel of land and the amount assessed as benefits thereto; and to set down as against the said City of Tucson the amount, if any, that shall have been found as public benefit, and certify such Assessment Roll to the Common Council of the said City of Tucson within thirty days from this date. Said Commissioners shall fix a time and place when and where they will meet to consider and decide upon such assessment, and shall give notice thereof to each owner of premises to be assessed, whose name and place of business is known to them, or which upon diligent inquiry can be ascertained, and of the time and place of their meeting, and shall afford an opportunity to all persons interested in any real estate to be vacated by such improvement to appear and
be heard, with such witnesses as they may produce; and in
206 all matters and things touching the duties of said Commissioners they shall observe and be controlled by the laws of the Territory of Arizona, the said ordinance of said City of Tucson No. 168, and this order; and shall certify said assessment roll when the same shall be finally found correct, with the testimony, if any, taken by them to the said Common Council, of the said City of Tucson, as required by law, and to abide the further order of this Court.

(Signed) GEO. R. DAVIS, *Judge*.

TERRITORY OF ARIZONA, *County of Pima, ss:*

I, Clinton D. Hoover, Clerk of the above entitled Court, do hereby certify the above and foregoing to be true, perfect and complete Order Appointing a Commission, made and entered by record of said Court, on the 5th day of December, A. D. 1903, in the case of the City of Tucson, Plaintiff, *vs.* Lizzie J. Woods *et al.*, Defendants, as the same now appears of record in my office.

Witness my hand and the seal of said Court affixed, this 7th day of December, 1903.

[SEAL.] CLINTON D. HOOVER, *Clerk*.

207 The said named Commissioners met in the office of John B. Wright, by appointment, at the hour of ten thirty a. m. on December 8, 1903. Upon motion, duly made and carried,

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J. W. Bogan was elected Chairman of the Committee, H. E. Heighton was appointed secretary and E. L. Bowers was appointed stenographer. This Committee was appointed by said Court on the 5th day of December, 1903, and this meeting was held within five days after their said appointment. The Committee thereupon fixed a time and place as hereinafter mentioned, when and where they will meet to consider and decide upon such assessment, said time being not less than fifteen days, nor more than 20 days from the date of their appointment; to wit: December 24th at 2 p. m. in the office of the City Hall.

The Committee made arrangements to give notice by mail to each owner of premises to be assessed, whose name and place of residence is known to them or upon diligent inquiry can be ascertained, of the time and place of their meeting, and provided that such notice should be mailed at least ten days before such date of hearing.

The Committee also made arrangements to cause such no-
208 tice to be given of such hearing by posting notices in at least four public places in the City of Tucson, two of which shall be in the neighborhood of such improvement, and by publishing the same one week in the Tucson Citizen, a daily newspaper in said city.

The work for the Committee to perform was then discussed and apportioned between them. The meeting was then adjourned, subject to the call of the chairman.

DECEMBER 14, 1903.

The Committee met and sent out notices as required by law to each owner to be assessed by Special Wedge Assessment, whose name and place of residence was known to them, or upon diligent inquiry was ascertained. This notice called for a meeting of all the parties interested, to be held at the City Hall, at 2 o'clock p. m., on the 24th day of December, therefore the said notices were mailed at least ten days before the date of hearing. The said notices were mailed to all parties whose names appear upon the map herewith filed and made a part hereof, the same being a map of Block 206, and adjacent property.

The Committee also caused notices to be posted in six public places in the City of Tucson, four of which were in the
209 neighborhood of such improvement, as follows: One on the public notice board in front of the Court-house; one on the public notice board in the Post-office; one on the telegraph pole on the northwest corner of Congress and Church streets; one on the telegraph pole on the north side of Congress Street, about half way between Court and Church Streets; one on the east side of Court Street, near the intersection of Congress Street, and one on the north side of Maiden Lane, about half way between Church and Court Streets.

Said Committee also caused a notice to be *posted* in the Tucson Citizen, a daily paper published in the said City of Tucson, for a period of one week. The notices so mailed out posted and published, as aforesaid, were in words and figures as follows:

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Special Assessment Notice.

Notice is hereby given to all persons interested that the Common Council of the City of Tucson, in Pima County, Arizona, having ordered that Congress Street, between Church Street and Court Street, in said Tucson, be opened and widened so as to include all of the land now lying in Block 205 of said city, bounded on the east by Church Street, on the south by Congress Street, on the west
210 by Court Street and on the north by Maiden Lane; and the District Court of the Territory of Arizona, in and for Pima County, having appointed the undersigned Committee to examine and report upon such improvement, and to make an assessment of the costs of such improvement, according to the benefits upon the property contiguous thereto, a hearing will be had by said Committee of all persons interested in said improvement and the lands to be affected by special assessment therefor, at the City Hall, in the City of Tucson, on the 24th day of December, 1903, at 2 o'clock p. m. All persons desiring may then and there appear and make any objection they may have to such improvement and assessment.

JOHN BOGAN,
H. H. PILLING,
JAS. FLYNN,
Committee.

DECEMBER 15, 1903.

The Committee met to consider assessment benefits to be derived from various properties by the removal of the Wedge. It was agreed that the north side of Maiden Lane, between Court and Church Streets, should be 50 per cent. of the entire assessment;
211 that the south side of Congress Street, between Court and Church Streets, should be 25 per cent. of the entire assessment; that the adjacent property benefited, including the city at large, if any, should be the balance, and the Clerk of the Board was instructed, by and with the advice of the Committee, to prepare an Assessment Roll showing the benefit to the property as aforesaid.

Minutes of meeting held in the Council Chamber in the City Hall, Tucson, Arizona, December 24, 1903, at 2 o'clock p. m., to hear objections of property owners to Special Assessment levied by Committee in connection with the removal of the Wedge between Church and Court Streets, in the City of Tucson.

Committee: J. W. Bogan, H. H. Pilling and James Flynn.

The meeting was called to order at 2:15 p. m. by Chairman Bogan.

CHAIRMAN: The first name on the Assessment list is A. R. English, Lot 5, Block 197, $12,533.75.

Mr. Hereford representing Mr. English, stated that there were several matters on which he would like to have an understanding. First, he wanted to know if the assessment was based on the
212 theory that the property lying south of that of Mr. English, between the English property and Congress Street, would go to Mr. English, to which the Chairman answered: Yes.

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Mr. Hereford then wanted to know whether the assessments were to be paid all at once or in installments. Suggested that the Committee, if they deem it advisable, embody in their report to Council, that owing to the fact that the amount of money to be raised is large, the Council consider the plan of making payments to be made in installments. Mr. Wright stated that he could answer that question by saying that if the city could make an arrangement to borrow the money at reasonable rate of interest, the assessment would be made payable in installments—say in four or five years, charging the property owners a like amount of interest on deferred payments.

CHAIRMAN: The next on the list is C. F. Schumacher, Lot 4, Block 197, $4,999.50.

Mr. Schumacher asked on what basis the Committee made the assessments, and was answered by Mr. Heighton that it was on the basis of $75 per front foot. Mr. Schumacher objected on the ground
213 that he was assessed too much as compared with the assessment of his neighbors, English and Hattich, both of whom owned property on a corner, the former on Church Street and the latter on Court Street, and by reason of the location of their property, they would be benefited by the removal of the Wedge, as they will both have room sufficient for building corner storerooms from which they will derive benefit in the way of rental for all time to come, while he (Schumacher) is sandwiched in between them. Thought the Committee had acted rather hastily in the matter.

CHAIRMAN: The next on the list is B. Hattich, Lot 3, Block 197, $6,103.00. Judge Barnes, representing Mr. Hattich, said he thought the whole trouble was that the city is paying too much for the ground, but now that they have agreed to pay it, they will have to distribute the $46,000 to the property benefited. He honestly believed that every one of the property owners was being benefited, but the questions is, are they benefited to the amount of their assessments? He thought the basis of the proposed assessment a fair and equitable one. So far as Mr. Hattich is concerned, he will offer no objection, provided others do not, but if the others object, Mr. Hattich will also.

214 CHAIRMAN: The next on the list is E. Lonergan, Lot 1, Block 211, $1,683.00. Judge Blenman, representing Miss Ellen Lonergan of San Francisco, objected on the ground that Miss Lonergan had already been assessed and paid $1,142.00 for widening Congress Street, at which time she paid one hundred per cent. more than was paid for property above hers on Congress Street.

CHAIRMAN: The next on the list is W. C. Davis estate, Lot 1, Block 210, $1,930.50; and Lot 2, Block 210, — and entered a general protest as to the amount of the assessment on the ground that the benefits are not in proportion to the amount assessed.

CHAIRMAN: The next on the list is Ezra Bartlett, Lot 3, Block 210, $1,152.00. No objection entered.

CHAIRMAN: The next on the list is Griselda Crandall, Lots 4, 5, and 6, Block 210, $3,317.75. No objection entered.

CHAIRMAN: The next on the list is M. W. Morrison, Lots 8 and 9, Block 210, $850.00. No objection entered.

CHAIRMAN: The next on the list is P. Charaleau, Lot 7, Block 219, $1,960.00. Represented by Judge Barnes, who objected on
215 the ground that the assessment is in excess of the benefit to the property.

CHAIRMAN: The next on the list is O. J. Nave, Lot 1, Block 197, $900.00. Represented by Frederick S. Nave, who objected on the ground that the taking out of the wedge will not benefit his father's property at all; he will not be able to get any more rent for it; it has always been occupied by tenants in the past and the removal of the wedge will not enable them to get any more tenants nor any higher rent than now received, and therefore there will be no benefit to the property by the removal of the wedge. If property so far removed from that immediately benefited is to be assessed, then the assessment should be made general and spread out.

CHAIRMAN: The next on the list is Louisa M. Matas, Lot 2, Block 197, $700.00. Represented by Judge Barnes, who made the same objection for Mrs. Matas as he had already made for Mr. Charaleau.

CHAIRMAN: The next on the list is W. C. Davis, Lot 2, Block 211, $150.00. No objection entered.

CHAIRMAN: The next on the list is R. G. Brady, Lot 3, Block 211, $850.00. Objection entered very vigorously.

216 CHAIRMAN: The next on the list is Matilda Zeckendorf, Lot 1, Block 198, $600.00. No objection entered.

CHAIRMAN: The next on the list is John Scolari, Lots 2 and 6, Block 198, $1,200.00. Mr. Scorlari objected on the ground that the assessment is too high in proportion to what others are to pay; thinks five or six hundred dollars enough for him to be assessed.

CHAIRMAN: The next on the list is F. Morales, Lots 3 and 4, Block 198, $500.00. No objection entered.

CHAIRMAN: The next on the list is Anne M. Neale, Lot 5, Block 198, $200.00. Wm. Reid represented her and entered protest.

CHAIRMAN: The next on the list is Eva Mansfield, Lot 1, Block 205, $600.00. No objection entered.

CHAIRMAN: The next on the list is A. Durazo, Lot 2, Block 205, $400.00. No objection entered.

CHAIRMAN: The next on the list is Stroufe & McCrum, Lot 11, Block 199, $1,000.00. John B. Wright appeared for Mrs. Stroufe and entered formal objection that the assessment is greater than the benefit.

CHAIRMAN: The next on the list is Chas. Lezinsky, Lot 10,
217 Block 199, $500.00. No objection entered.

CHAIRMAN: The next on the list is R. C. Leon, Lot 9, Block 199, $400.00. No objection entered.

CHAIRMAN: The next on the list is Alex. Craig, Lot 10, Block 199, $66.00. Represented by N. E. Plummer, who entered formal protest.

CHAIRMAN: The next on the list is the Star Publishing Company, Lots 8 and 9, $55.35. No objection entered.

CHAIRMAN: The next on the list is W. E. Murphy, Lot 10 Block 196, $57.45. No objection entered.

CHAIRMAN: The next on the list is H. Granjon, Lot 3, Block 209, $122.43. No objection entered.

CHAIRMAN: The next on the list is Barnabe Robles, Lot 4, Block 209, $24.65. No objection entered.

CHAIRMAN: The next on the list is S. Otero, Lot 5, Block 209, $40.00. No objection entered.

CHAIRMAN: The next on the list is Tucson Gas & Electric Co., Lot 6, Block 106, $46.00. No objection entered.

218 CHAIRMAN: The next on the list is O. M. Anderson, Lot 1, Block 214, $125.00. No objection entered.

CHAIRMAN: The next on the list is N. H. Matas, Lots 8, 10 and 12, Block 214, $147.50. No objection entered.

CHAIRMAN: The next on the list is Pauline Darms, Lot 3, Block 214, $38.00. No objection entered.

CHAIRMAN: The next on the list is Julius Flinn, Lot 4, Block 214, $60.00. F. K. Miller appeared for Mr. Flinn and made formal objection on the ground that Mr. Flinn's property would not be benefited at all, as it is located on Broadway, not within sight of the new Congress Street, block 210 intervening; that the removal of the wedge and the opening of Congress Street will deteriorate rather than increase the value of Mr. Flinn's property because it will concentrate the business of the city on Congress Street to the detriment of property on other streets; that Mr. Flinn's property should not be assessed at all; that when Broadway is opened to the west, as it must be some day, it will be done at the expense of property owners on that street, and they should not be asked to pay for opening Congress Street.

219 CHAIRMAN: The next on the list is Paul Abadie & Co., Lot 5, Block 214, $170.00. No objection entered.

CHAIRMAN: The next on the list is P. Charaleau, Lot 6, Block 215, $65.00. No objection entered.

CHAIRMAN: The next on the list is Pima County, $500.00. Represented by Roscoe Dale, who entered formal objection which was supported with a denial of the power of the Committee to apportion any such amount, or any amount at all, or to levy or cause to be levied any assessment upon the property of Pima County; that the property of Pima County is not enhanced in the sum of five hundred dollars or any other amount; that there is no law, ordinance or other proper proceedings to support this special assessment; that the property of Pima County proposed to be assessed is not contiguous to the proposed improvement; that the proposed improvement is not a public improvement; that there has been no preliminary estimate made of the cost of the improvement; that the apportionment proposed to be assessed against Pima County is disproportionate to the assessment of properties in the immediate vicinity, and is disproportionate to the benefits of Pima County; and that there is no jurisdic-
220 tion to assess or levy the amount proposed to assess against the property of Pima County.

CHAIRMAN: The next on the list is the Elks, Lot 1, Block 191, $120.00. Formal objection entered by Roscoe Dale.

CHAIRMAN: The next on the list is Wm. Herring, Lot 5, Block 191, $150.00. No objection entered.

CHAIRMAN: The next on the list is T. G. Fitch, Lot 2, Block 191, $75.00. Formal protest entered by N. E. Plumer.

CHAIRMAN: The next on the list is Wm. Reid, Lots 3 and 4, Block 191, $102.00. Represented by himself in person, who entered no formal protest.

CHAIRMAN: The next on the list is L. J. Sanford, Lot 5, Block 190, $135.00. No objection entered.

CHAIRMAN: The next on the list is Corbett Bros., Lots 1, 2, 3 and 4, Block 190, $175.00. No objection entered.

CHAIRMAN: The next on the list is the Tucson Natatorium, Lot 1, Block 199, $72.00. No objection entered.

CHAIRMAN: The next on the list is George Goodfellow,
221 Lots 2 and 14, Block 199, $65.00. Represented by L. M. Jacobs, who entered formal protest.

CHAIRMAN: The next on the list is Henry Madsen, Lot 3, Block 199, $25. Appeared for himself. No objection.

CHAIRMAN: The next on the list is Sally Eber, Lots 4, 5, 6, 7, 8, 12 and 13, Block 199, $144.00. No objection entered.

CHAIRMAN: The next on the list is Geo. Goodfellow, Lots 1, 2, 3 and 4, Block 200, $30.00. No objection entered.

CHAIRMAN: The next on the list is G. Florsheim, Lot 1, Block 202, $40.00. No objection entered.

CHAIRMAN: The next on the list is E. Mansfield, Lot 1, Block 202, $40.00. No objection entered.

CHAIRMAN: The next on the list is E. Lonergan, Lot 1, Block 204, $200.00. No objection entered.

CHAIRMAN: The next on the list is W. J. Corbett, Lots 2 and 4, Block 204, $132.00. No objection entered.

CHAIRMAN: The next on the list is Sally Eber, Lot 6, Block 204, $18.00. No objection entered.

222 CHAIRMAN: The next on the list is Consolidated National Bank, Lot 3, Block 294, $15.00. No objection entered.

CHAIRMAN: The next on the list is T. G. Fitch, Lots 5 and 7, Block 204, $23.80. Formal protest entered by N. E. Plumer.

CHAIRMAN: The next on the list is H. Monager, Lot 1, Block 213, $25.00. No objection entered.

CHAIRMAN: The next on the list is Lillie Devant, Lot 2, Block 213, $22.50. Represented by C. F. Devant, who entered formal protest on the ground that the property will not be benefited by the removal of the wedge.

CHAIRMAN: The next on the list is Elvira Carillo, Lot 3, Block 213, $25.00. Represented by Jesusa Carillo, her daughter, who protested that the property will not be benefited, as it is too far away from the improvement.

CHAIRMAN: The next on the list is Maish Driscoll & Co., Lot 5, Block 213, $117.50. No objection entered.

CHAIRMAN: The next on the list is E. Rochester, Lot 11, Block 213, $15.00. No objection entered.

CHAIRMAN: The next on the list is Pedro Charaleau, Lot 1, Block 212, $313.00. Judge Barnes entered protest on the ground that the property is not benefited.

223 CHAIRMAN: The next on the list is Lillie Devant, Lot 2, Block 212, $50.00. Represented by C. F. Devant, who entered formal protest on the ground that the property is too far away to be benefited.

Mr. Hereford, on behalf of Mr. English and W. C. Davis, Lot 2, Block 211, entered protest, but said it was done merely for the purpose of saving the question of review. He did not wish to intimate that they would have any objections, but simply wanted to have their right to it.

Meeting adjourned at 4 p. m.

TERRITORY OF ARIZONA, *Pima County*, ss:

H. E. Heighton, being first duly sworn on his oath deposes and says: That he posted in six public places in the City of Tucson, Pima County, Arizona, copies of notices, of which the annexed is one, as follows, to wit: One notice was attached to a public notice board in front of the Courthouse of said Pima County; one on a public notice board in the Postoffice in the City of Tucson; one on a telegraph pole on the northwest corner of Congress and
224 Church Streets; one on a telegraph pole on the north side of Congress Street about half way between Court and Church Streets; one on the east side of Court Street near the intersection of Congress Street; one on the north side of Maiden Lane, about half way between Church and Court Streets. That four of said notices were posted in the neighborhood of the improvement contemplated, namely, the removal of Block 206. That said notices were posted on the 14th day of December, 1903, by me, and they remained so posted, to my knowledge, up to and including the 24th day of December, 1903.

H. E. HEIGHTON.

Subscribed and sworn to before me this 28th day of December, 1903.

My commission expires May 2, 1905.

[SEAL.] JOHN B. WRIGHT,
Notary Public, Pima County, Arizona.

Special Assessment Notice.

Notice is hereby given to all persons interested, that the Common Council of the City of Tucson, in Pima County, Arizona Territory, having ordered that Congress Street, between Court Street and Church Street, in said City of Tucson, be opened and widened so as to include all of the land now lying in Block 206 of said city,
225 bounded on the east by Church Street, on the south by Congress Street, on the west by Court Street, and on the north by Maiden Lane, and the District Court of the First Judicial District of the Territory of Arizona, in and for the County of Pima, having appointed the undersigned committee to examine and report upon such improvement, and to make an assessment of the costs of such

improvement, according to the benefits upon the property contiguous thereto, a hearing will be had by said committee of all persons interested in said improvements, and the lands to be affected by the special assessment, therefor, at the City Hall, in the City of Tucson, on the 24th day of December, 1903, at 2 o'clock p. m. All persons desiring may then and there appear and make any objections they may have to such improvement and assessment.

JOHN BOGAN,
H. H. PILLING,
JAS. FLYNN,
Committee.

TERRITORY OF ARIZONA, *County of Pima, ss:*

226 Frank E. Lee, being first duly sworn, deposes and says: That he is the business manager of the Citizen Printing and Publishing Company, an incorporation incorporated under the laws of the Territory of Arizona, and that the said Citizen Printing and Publishing Company prints and publishes the Tucson Citizen, a daily newspaper printed and published in the City of Tucson, Pima County, Territory of Arizona, and of general circulation in said city, county, Territory and elsewhere, and that the heretofore attached notice of special assessment notice was printed and published correctly in the regular and entire issues of each and every number of The Tucson Citizen six days in each week; and daily for seven successive days; that the first publication of said attached notice was made on the 16th day of December, 1903, and the last publication thereof was made on each of the following dates, to wit: December 16, 17, 18, 19, 21, 22, 23, Dated, etc.

FRANK E. LEE,
Business Manager.

Subscribed and sworn to before me this 28th day of December, 1903.

227 My commissione expires on the 1st day of March, 1905.

WILLIAM J. OSBORN,
[NOTARIAL SEAL.] *Notary Public.*

Special Assessment Notice.

Notice is hereby given to all persons interested, that the Common Council of the City of Tucson, in Pima County, Arizona Territory, having ordered that Congress Street, between Court and Church Streets, in said City of Tucson, be opened and widened so as to include all the land now lying in Block 206 of said city, bounded on the east by Church Street, on the south by Congress Street, on the west by Court Street, and on the north by Maiden Lane, and the District Court of the First Judicial District of the Territory of Arizona, in and for the County of Pima, having appointed the undersigned committee to examine and report upon such improvement, and to make an asses-ment of the costs of such improvement, according to

the benefits upon the property contiguous thereto; a hearing will be had by said committee of all persons interested in said improvements, and the lands to be affected by the special assessment therefor, at the City Hall in the City of Tucson, on the 24th day of
228 December, 1903, at 2 o'clock p. m. All persons desiring may then and there appear, and make any objections they may have to such improvement and assessment.

JOHN BOGAN,
H. H. PILLING,
JAS. FLYNN,
Committee.

770-49-55.

Original Assessment Roll, Account of Removal of Block No. 206.

Owner.	Lot.	Block.	Amount.
A. R. English	5	197	$12,533.75
C. F. Schumacher	4	197	4,999.50
B. Hattich	3	197	6,103.00
E. Lorengan	1	211	1,683.00
W. C. Davis Estate	1	210	1,930.50
W. C. Davis Estate	2	210	739.20
Griselda Crandall	4, 5, 6	210	3,317.50
Ezra Bartlett	3	210	1,152.00
M. W. Morrison	8, 9	210	850.00
P. Charaleau	7	210	1,960.00
O. J. Nave	1	197	900.00
Louisa M. Matas	2	197	700.00
W. C. Davis Estate	2	211	150.00
R. G. Brady	3	211	850.00
Matilda Zeckendorf	1	198	600.00
John Scorlari	2, 6	198	1,200.00
229 F. Morales	3, 4	198	500.00
Anne M. Neal	5	198	200.00
Eva Mansfield	1	205	600.00
A. Durazo	2	205	600.00
Sroufe & McCrum	11	199	1,000.00
Chas. Lezinsky	10	199	600.00
R. C. Leon	9	199	400.00
Alex. Craig	10	193	66.00
Emilio L. Bowers	7	196	23.00
H. Wright	11	196	26.00
Star Pub. Co.	8, 9	196	55.35
W. E. Murphy	10	196	57.45
H. Granjon	3	209	122.43
Barnabe Robles	4	209	24.65
S. Otero	5	209	24.65
Tucson Gas & Electric Co.	6	193	46.00
O. M. Anderson	1	214	125.00

Owner.	Lot.	Block.	Amount.
N. H. Matas	8, 10, 12	214	$147.50
Pauline Darms	3	214	38.00
Julius Flin	4	214	170.00
P. Charaleau	6	215	65.00
Pima County	.....	.....	500.00
The Elks	1	191	120.00
Wm. Herring	5	191	150.00
T. G. Fitch	2	191	75.00
Wm. Reid	3, 4	191	102.00
L. J. Sanford	5	190	135.00
Corbett Bros	1, 2, 3, 4	190	175.00
230 Tucson Natatorium	1	199	72.00
Geo. Goodfellow	2, 14	199	65.00
Henry Madsen	3	199	25.00
Saly Eber	4, 5, 6, 7, 8, 12, 13	199	144.00
Geo. Goodfellow	1, 2, 3, 4	200	30.00
G. Florsheim	1	202	40.00
E. Mansfield	1	202	40.00
E. Lonergan	1	204	200.00
W. J. Corbett	2, 4	204	132.00
Saly Eber	6	204	18.00
Cons. National Bank	3	204	15.00
T. G. Fitch	5, 7	204	23.80
H. Menager	1	213	25.00
Lillie Devant	2	213	22.50
Elvira Carillo	3	213	25.00
Maish Driscoll & Co	5	213	117.50
E. Rochester	11	213	15.00
Pedro Charaleau	1	212	313.00
Lillie Devant	2	212	50.00
			$47,065.08

H. H. PILLING.
JOHN BOGAN.
JAMES FLYNN.

DECEMBER 29, 1903.

The Committee met at the office of John B. Wright at 3 p. m. to consider the objections made to assessment roll at the public
231 meeting of December 24th, in the City Hall. The following modifications of the assessment roll were made in accordance with information derived at said public meeting: It appearing that Frank Mason is owner of 27.4 feet on east part of Lot 1 in Block 210, and that Jacome & Manzo are owners of 41 feet frontage next west of said Mason Lot, and being a part of Lots 1 and 2 in said Block 210, the assessment against the W. C. Davis Estate upon said lots was changed and instead of being assessed to W. C. Davis Estate the assessment is modified as per the assessment roll entitled, "Modi-

fied and Corrected Assessment Roll," and the public benefit is assessed at $1.00.

Meeting adjourned.

____ ____.
____ ____.
____ ____.

TUCSON, ARIZONA, *Dec.* 28, 1903.

To the Mayor and Common Council of the City of Tucson.

GENTLEMEN: Your Committee appointed by the District Court of the First Judicial District of the Territory of Arizona in and for Pima County, on the 5th day of December, 1903, in the mat-
232 ter of the removal of Block No. 206 in the City of Tucson, beg leave to report as follows:

That we have made an assessment for the purpose of raising the amounts necessary to pay the compensation and damages which have been awarded in the said cause according to the verdict duly recorded therein, to wit, the sum of $46,500.00; and we have ascertained as near as may be the costs incurred at the time of this appointment, and the probable further costs of proceedings, including therein an estimate of the cost of making and collecting such assessment, including therein all such costs in the sum total of such assessment, and have found the same to be the sum of $470.88. We have examined the locality of said Block No. 206 in the City of Tucson, Pima County, Arizona, and the lots, blocks, tracts and parcels of land which shall be benefited by the removal of the improvements upon said Block 206 and the widening of Congress Street contemplated and ordered by Ordinance No. 168 of the City of Tucson. We have estimated what proportion of the total cost of the proposed improvement will be of benefit to the public, if any, and we have apportioned the same between the said City of Tucson and such property so bene-
233 fited so that each shall have its relative equitable proportion.

Having found such amounts, we have apportioned and assessed such amounts as far as they will be of benefit to the property, upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement, and we have assessed no lot, block, tract or parcel of land in any greater amount than it will be actually benefited. We have also made an assessment roll in which appears the names of the owners so far as known, and a description of each lot, block, tract or parcel of land and the amounts assessed as benefits thereto; and we have set down as against the said City of Tucson the amount, if any, that has been found as a public benefit, and we hereby certify such assessment roll to your Honorable Body at a date within at least thirty days from the said 5th day of December, 1903.

We further report that within five days after our appointment, to wit, on the 8th day of December, 1903, we met and fixed a place when and where we would meet to consider and decide upon such assessment, which time was not less than fifteen nor more than

twenty days from the date of our appointment, to wit, the
234 time fixed being on the 24th day of December, 1903, at 2
o'clock p. m., in the City Hall of the City of Tucson. That pursuant to our instructions we sent notices of the time and place of such meeting by mail to each owner of premises to be assessed, whose name and place of residence was known to us or upon diligent inquiry could be ascertained. That said notices were so mailed at least ten days before the date set for the hearing as aforesaid, to wit, on the 14th day of December, 1903. We also caused notice to be given of the said hearing by posting notices in at least four public places in this city, at least two of which were posted in the neighborhood of the proposed improvement, and we published a notice of the same at least once in a newspaper published in the City of Tucson, which notices so mailed, posted and published as aforesaid in all respects complied with the statutory requirements. We afforded an opportunity to all persons interested in any real estate to be vacated by such improvement, or to be benefited by such improvement, to appear and be heard, with such witnesses as they cared to produce. Pursuant to law and such notices so posted, mailed and published (certified copies of which are hereto
attached and made a part hereof) we met at the City Hall in
235 the City of Tucson on the 24th day of December, 1903, at 2
o'clock p. m., to hear all objections on the part of interested persons, there to be submitted and presented. At this hearing all of your committee were present, and property owners and interested persons there appeared. Your Committee had prepared an assessment roll and had prepared a map or plat of the proposed improvement, and there submitted the same to the persons present for inspection, and a general discussion of the proposed improvement and special assessment was entered into, and certain objections were submitted, either to the proposed improvement or to the assessment roll as there submitted for inspection, which said assessment roll together with the map or plat above referred to is hereto attached and made a part of this report. Thereafter and on, to wit, the 29th day of December, 1903, your Committee met and changed and modified said assessment roll, and submits attached hereto a copy of the modified assessment roll.

Wherefore, your Committee respectfully submits its report, and as a part of the proposed improvement hereto attached; also the modified assessment roll hereto attached; also a full report of its
236 meetings from the time of its appointment to the present time
hereto attached; and also the objections and criticisms, together with all the evidence of objectors and their witnesses at the said meeting held on the 24th day of December, 1903, as aforesaid. And we submit that the sums set opposite each of said respective names in said amended or modified assessment roll, in the best judgment of your Committee, represent the benefits which the said proposed improvement will afford to the parcels of land set opposite the amount of said sums. Your Committee further reports that the benefit to accrue to the City of Tucson and to the public in general is the sum of $1.00, and that the said public or the City of Tucson

at large is not benefited to any greater extent by reason of said improvement.

We recommend the City Council to provide for the payment of these assessments in five annual installments as provided by Section 11, Act 57 of the Nineteenth Legislative Assembly and amendments thereto.

Your Committee, therefore, after confirmation, modification or rejection of the modified assessment roll, as to your Honorable
237 Body shall seem just and meet, begs leave to be discharged from further service.

Respectfully submitted,

J. W. BOGAN,
JAMES FLYNN,
H. H. PILLING,
Special Committee.

Owner.	Lot.	Block.	Amount.
A. R. English	5	197	$12,533.75
C. F. Schumacher	4	197	4,999.50
B. Hattich	3	197	6,103.00
E. Lonergan	1	211	1,683.00
W. C. Davis Estate	1	210	1,930.50
W. C. Davis Estate	2	210	739.20
Griselda Crandall	4, 5, 6	210	3,317.75
Ezra Bartlett	3	210	1,152.00
M. W. Morrison	8, 9	210	850.00
P. Charaleau	7	210	1,960.00
O. J. Nave	1	197	900.00
Louisa M. Matas	2	197	700.00
W. C. Davis Estate	2	211	150.00
R. G. Brady	3	211	850.00
John Scorlari	2, 6	198	1,200.00
Matilda Zeckendorf	1	198	600.00
F. Morales	3, 4	198	500.00
Anne M. Neal	5	198	200.00
Eva Mansfield	1	205	600.00
238 A. Durazo	1	205	600.00
Sroufe & McCrum	11	199	1,000.00
Chas. Lezinsky	10	199	600.00
R. C. Leon	9	199	400.00
Alex. Craig	10	193	66.00
Emilio L. Bowers	7	196	23.00
H. Wright	11	196	26.00
Star Pub. Co.	8, 9	196	55.35
W. E. Murphy	10	196	57.45
H. Granjon	3	209	122.43
Barnabe Robles	4	209	24.65
S. Otero	5	209	40.00
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O. M. Anderson	1	214	125.00
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The Elks	1	191	120.00
Wm. Herring	5	191	150.00
T. G. Fitch	2	191	75.00
Wm. Reid	3, 4	191	102.00
L. J. Sanford	5	190	135.00
Corbett Bros	1, 2, 3, 4	190	175.00
Tucson Natatorium	1	199	72.00
Geo. Goodfellow	2, 14	199	65.00
Henry Madsen	3	199	25.00
239 Sala Eber	4, 5, 6, 7, 8, 12, 13	199	144.00
Geo. Goodfellow	1, 2, 3, 4	200	30.00
G. Florsheim	1	202	40.00
E. Mansfield	1	202	40.00
E. Lonergan	1	294	200.00
W. J. Corbett	2, 4	204	132.00
Saly Eber	6	204	18.00
Cons. National Bank	3	204	15.00
T. G. Fitch	5, 7	204	23.80
H. Menager	1	213	25.00
Lillie Devant	2	213	22.50
Elvira Carillo	3	213	25.00
Maish Driscoll & Co	5	213	117.50
E. Rochester	11	213	15.00
Pedro Charaleau	1	212	313.00
Lillie Devant	2	212	50.00
City of Tucson	.....	.....	1.00
			$46,970.88

H. H. PILLING.
JOHN BOGAN.
JAMES FLYNN.

TERRITORY OF ARIZONA, *County of Pima, City of Tucson, ss:*

I, F. S. Treat, City Recorder and *Ex-Officio* Clerk of the
240 City of Tucson, County of Pima, Arizona Territory, hereby certify that the foregoing are true, correct and compared copies of the Report and Original Assessment Roll, and the Modified and corrected Assessment Roll, of Commissioners appointed by the Court *in re* City of Tucson *vs.* Lizzie J. Woods *et al.*, to make special assessments in the matter of the condemnation and removal of Block 206 in the City of Tucson, presented to and filed with the Mayor and Council of the City of Tucson, on the 30th day of December, 1903, as the same appear and are of record in my office.

In witness whereof I have hereunto set my hand and seal of the City of Tucson this 13th day of January, 1906.

[SEAL.] FRANK S. TREAT,
Recorder and Ex-Officio City Clerk of the City of Tucson, Arizona Territory.

Minutes of the Common Council of the City of Tucson of April 8, 1901.

Petition from property holders on Congress Street and Maiden Lane, and fronting Block 206 and 207, for condemnation proceedings to be instituted against said Blocks were read, received and filed.

241 Resolution No. 45 that the petitions be granted offered by Russell, seconded by Reid, and carried by a unanimous vote. Proposed Ordinance No. 145 was then read, providing for the altering and widening of Congress Street in the City of Tucson, moved by Reid and seconded by Goodwin that it be read second and third time by title, and placed on its final passage, so ordered.

Ordinance No. 145, read second and third time.

Ordinance No. 145, read second and third time by title, and on final passage roll call resulted.

Angus voted yes.
Goodwin voted yes.
Hale voted yes.
Reid voted yes.
Russell voted yes.
Shand voted yes.

Mayor announced Ordinance No. 145 duly passed and approved.

A committee of three was then appointed by the Mayor on motion of Reid and seconded by Hale, this committee to proceed in accordance with Article IX, Section 7, Act 57 of the 12th Legislative Assembly of the Territory of Arizona. Messrs. M. G. Samaniego,

242 W. J. Corbett and Albert Steinfeld were appointed and on motion by Angus, seconded by Goodwin, said appointees were confirmed.

TERRITORY OF ARIZONA, *County of Pima, ss:*

I, F. S. Treat, Recorder and *Ex-Officio* Clerk of the City of Tucson, County of Pima, Territory of Arizona, hereby certify that the foregoing is a true, correct and exact copy of the Minutes of the Council of the City of Tucson of April 8, 1901, which are on file in my office.

In witness hereof I have hereunto set my hand and seal this 11th day of January, 1906.

[SEAL.] FRANK S. TREAT,
Recorder and Ex Officio City Clerk.

Minutes of the Common Council of the City of Tucson, May 7, 1901.

Petition to take necessary steps towards condemning of 39½ feet on West Congress Street, in Blocks 199, 201, 202 in the City of Tucson, was referred to the entire Council as a committee of the whole. The City Engineer was instructed to prepare plans showing proposed improvements and changes required by petitioners for
243 condemnation proceedings in Blocks 206, 207, 199, 201 and 202.

Approved:

C. F. SCHUMACHER, *Mayor.*

Attest:

N. E. HAWKE,
City Clerk.

TERRITORY OF ARIZONA, *County of Pima, ss:*

I, F. S. Treat, Recorder and *Ex-Officio* Clerk of the City of Tucson, County of Pima, Territory of Arizona, hereby certify that the foregoing is a true, correct and exact copy of the Minutes of the Common Council of the City of Tucson, Arizona Territory, of May 7, 1901, which are on file in my office.

In witness hereof I have hereunto set my hand and seal this — day of January, 1906.

[SEAL.]

FRANK S. TREAT,
Recorder and Ex Officio City Clerk.

Minutes of the Common Council of the City of Tucson, June 19, 1903.

Meeting called for the purpose of considering matters pertaining to the condemnation of Blocks 206 in the City of Tucson.

244 The petition for condemnation of said Block formerly filed April 8, 1901, with additional signatures thereon was read, and proposed Ordinance No. 168 providing for altering and widening Congress Street between Church Street and Court Street in the City of Tucson, was read first by the City Clerk. On motion by Reid, seconded by Contzen the proposed Ordina-ce was read a second and third time by title and placed on the final passage. On its final passage the roll was called and resulted as follows:

Anderson voted aye.
Barkley voted aye.
Contzen voted aye.
Heermans voted aye.
Reid voted aye.
Villaescusa voted aye.

The Mayor announced Ordina-ce No. 168 duly passed and approved.

The Council on motion adjourned.

Approved:

C. F. SCHUMACHER, *Mayor.*

Attest:

N. E. HAWKE,
City Clerk Pro Tem.

TERRITORY OF ARIZONA, *County of Pima, ss:*

I, F. S. Treat, Recorder and *Ex-Officio* Clerk of the City of Tucson, County of Pima, Territory of Arizona, hereby certify that the foregoing is a true, correct and exact copy of the Minutes of the Common Council of the City of Tucson, Arizona Territory, of June 19, 1903, which are on file in my office.

In witness hereof I have hereunto set my hand and seal this 11th day of January, 1906.

[SEAL.]

FRANK S. TREAT,
Recorder and Ex Officio City Clerk.

Resolution No. 45.

That whereas certain property owners fronting on the North side of Congress Street and the South side of Maiden Lane, between Court Street and Stone Ave., of the City of Tucson, Pima County, Arizona Territory, and representing the majority of the property frontage throughout the district as described, have petitioned the Mayor and Common Council of the City for the removal of Blocks 206 and 207 of this City commonly known as the "Wedge," for the benefit of the public and an improved highway, and whereas the said petitioners do state in their petitions as filed with the City Recorder of
246 the said City of Tucson, that all expenses incident to the removal of said Blocks 206 and 207 shall be borne by the various properties fronting on said Congress Street and Maiden Lane between the districts as described and contiguous thereto, for any and all amounts that may be adjudged as valuations to be taken from the various owners of properties to be condemned. Now therefore, be it resolved that the Mayor and Common Council of the City of Tucson, acting under authority of the provisions of the City Charter of the City of Tucson, Pima County, Arizona Territory and other acts of the Territory, take any and all steps required by law, for the removal of said Blocks 206 and 207, assessing the costs thereof for such removal, to the properties to be benefitted as specified in the petitions filed and the conversion of the real estate involved into a highway.

Passed and adopted by the Mayor and Common Council of the City of Tucson this 8th day of April 1901.

Approved:

C. F. SCHUMACHER, *Mayor.*

Attest:

N. E. HAWKE,
City Clerk.

247 TERRITORY OF ARIZONA, *County of Pima, ss:*

I, F. S. Treat, Recorder and *Ex-Officio* Clerk of the City of Tucson, County of Pima, Territory of Arizona, hereby certify that the foregoing is a true, correct and exact copy of Resolution No. 45, passed

and approved by the Mayor and Common Council of the City of Tucson April 8th, 1901, which is on file in my office.

In witness hereof I have hereunto set my hand and seal this 11th day of January, 1906.

[SEAL.] FRANK S. TREAT,
Recorder and ex-Officio City Clerk.

Resolution No. 100.

Whereas, The report of the Committee, or Commission, appointed by the District Court of the First Judicial District of the Territory of Arizona, in and for Pima County, dated the 5th day of December 1903, in the case of the City of Tucson *vs.* Lizzie J. Woods *et al.*, involving the condemnation of Block 206 in the City of Tucson, for the purpose of making an assessment for raising the amounts necessary to pay the compensation and damages awarded the owners of property in said suit, together with the assessment roll as prepared by them, was on this date presented to the Common Council of the City of Tucson; and,

248

Whereas, said Common Council proceeded to examine and reject, and confirm or modify the assessment roll and the assessments therein contained, and also examine the evidence of objectors at the meeting of said Committee on December 24, 1903; and the said Common Council having so proceeded to examine and reject, confirm, or modify and confirm the assessment roll as aforesaid. Now, therefore,

Be it resolved: That the said report and assessment roll are hereby confirmed, and as so confirmed the assessment shall stand as a valid tax and be a lien upon the several lots, blocks and pieces of land assessed therein as other and general City taxes are, to the amount of such assessment as was confirmed herein against each lot, block or piece of land.

Passed and adopted by the Mayor and Common Council of the City of Tucson this 30th day of December, 1903.

Approved:

C. F. SCHUMACHER, *Mayor.*

Attest:

FRANK S. TREAT,
Recorder and ex-Officio City Clerk.

249 TERRITORY OF ARIZONA, *County of Pima, ss:*

I, F. S. Treat, Recorder and *Ex-Officio* Clerk of the City of Tucson, County of Pima, Territory of Arizona, hereby certify that the foregoing is a true correct and exact copy of Resolution No. 100, passed and adopted by the Mayor and Common Council of the City of Tucson December 30th, 1903, which is on file in my office.

In witness hereof I have hereunto set my hand and seal this 11th day of January, 1906.

[SEAL.] FRANK S. TREAT,
Recorder and ex-Officio City Clerk.

Resolution No. 108.

Be it resolved by the Mayor and Common Council of the City of Tucson as follows:

Whereas, Heretofore and on to wit, the 19th day of June 1903 the Mayor and Common Council of the City of Tucson, by their Ordi-*dana*-ce No. 168, provided for altering and widening Congress Street between Church Street and Court Street in said City, by Special assessment of adjacent property benefited; and

Whereas: Said Ordinance contemplated the entire removal
250 of Block No. 206 in said City, and when removed it was the expressed purpose and intention that the part of Maiden Lane lying between Church Street and Court Street should be vacated and should become a part of the property abutting thereon the North; and,

Whereas, acting on such expressed agreement the committee appointed to estimate the benefits to adjacent property assessed about one-half of the entire cost of the removal of said Block 206 to the properties directly fronting on the North side of Maiden Lane between Church Street and Court Street, to wit, upon Lots Nos. 3, 4 and 5 in Block No. 197; and,

Whereas: The said Block No. 206, has now been removed and a new map of said Block No. 197, in the City of Tucson, has been prepared by the City Engineer and adopted by the Mayor and Common Council on the 5th day of July, 1904, which said map shows the portion of Maiden Lane to be vacated as a street, and also the property to be added to the lots abutting on Maiden Lane on the north by reason of the vacation of that portion of Maiden Lane suffi-
251 cient to make Congress Street of a uniform width of eighty feet throughout its entire length, therefore.

Be it resolved; that that portion of Maiden Lane shown upon the said map, so approved and adopted as aforesaid, be and the same is hereby vacated, and the same shall become a part of the lots abutting on Maiden Lane to the North to-wit, Lots Nos. 3, 4 and 5 in Block No. 197, and in the proportion which it should justly bear to such lots, and as shown specifically be metes and bounds on said map; provided, however, and this resolution is upon the expressed understanding, that the assessments levied upon the said Lots 3, 4 and 5 are paid, and said vacated portion of said Maiden Lane is not to become a part of any of said lot or lots, or to be added thereto, until the assessment upon such lot or lots is paid in full, and when so paid this resolution as to the lot or lots upon which the assessment is paid is to be in immediate force and effect.

Be it further resolved: That the City Clerk and Recorder of the City of Tucson is hereby required to record a certified copy of this resolution, together with a certified copy of said map of Block No. 197, with the City Recorder of Pima County, Territory of Arizona.

252 Passed and adopted by the Mayor and Common Council this 5th day of July, 1904.

FRANK S. TREAT,
City Clerk.

Approved this 5th day of July, 1904.
C. F. SCHUMACHER, *Mayor.*

TERRITORY OF ARIZONA, *County of Pima, ss:*

I, F. S. Treat, Recorder and *Ex-Officio* Clerk of the City of Tucson, County of Pima, Territory of Arizona, hereby certify that the foregoing is a true, correct and exact copy of Resolution No. 108, which is on file in my office.

In witness hereof I have hereunto set my hand and seal this 11th day of January, 1906.

[SEAL.]

FRANK S. TREAT,
Recorder and ex-Officio City Clerk.

253 Ordinance No. 145, Providing for the Altering and Widening of Congress Street, in the City of Tucson, Pima County, Arizona Territory.

Be it ordained by the Mayor and Common Council of the City of Tucson, as follows:

SECTION 1. That Congress Street and Maiden Lane of this City between Stone Avenue and Court Street, be altered and widened so as to include all the land now lying East of Court Street of this city, and West of Stone Avenue of this City, and between Maiden Lane of this City and Congress Street of this City.

SECTION 2. That actions and proceedings be at once instituted and presented without unnecessary delay, by the proper officers of this City, and such person or persons as they shall have the legal right to appoint or designate, to purchase or have condemned, under the provisions of the laws of the Territory of Arizona and this City, for the purpose of obtaining the right to, and of transforming the same into a street, all the land embraced and within the limits of Blocks 206 and 207, of this City, and all other property lying as afore-
254 said between the said Congress Street Stone Avenue, Maiden Lane and Court Street in said City of Tucson, to the end that the legal right or title to remove the improvements thereon, and to use, occupy and enjoy the same as a Street shall vest in the City.

SECTION 3. All expense incurred in carrying out the provisions of this Act shall be met by special assessment, the proportions and am-unts of each of which are hereafter to be determined in a manner provided by the law.

SECTION 4. That all that part of Maiden Lane lying between said Stone Avenue, Maiden Lane and Court Street, and all the lands South thereof to the South line of said Congress Street shall after the legal title or right to use the same therefor has been obtained and the improvements removed, be known as and become a part of Congress Street.

SECTION 5. All ordinances, or parts of Ordinances, in conflict with this Ordinance are hereby repealed.

SECTION 6. This Ordinance shall take effect and be in force ten (10) days after the first publication thereof.

255 Passed and adopted by the Common Council of the City of Tucson, Arizona Territory, this 8th day of April A. D. 1901. Approved April 8, 1901.

C. F. SCHUMACHER, *Mayor.*

Attest:

N. E. HAWKE,
Recorder and Ex Officio Clerk.

TERRITORY OF ARIZONA, *County of Pima, ss:*

I, F. S. Treat, Recorder and *Ex Officio* Clerk of the City of Tucson, County of Pima, Territory of Arizona, hereby certify that the foregoing is a true, correct and exact copy of Ordinance No. 145 passed and adopted by the Common Council of the City of Tucson, Arizona Territory, April 8th, 1901, which is on file in my office.

In witness hereof I have hereunto set my hand and seal this 11th day of January, 1901.

[SEAL.]

FRANK S. TREAT,
Recorder and Ex Officio City Clerk.

256 Ordinance 151, Providing for Altering and Widening Congress Street between Church Street and Pearl Street in the City of Tucson.

Whereas, a petition has been filed with the City Recorder of the City of Tucson, signed by the owners of a majority of the lineal frontage of property fronting upon Block 206 and portions of Blocks numbered 199, 202, 201 in this City praying that proceedings be taken to condemn all private property in the said Block and portions of Blocks, and that the land embraced therein be thrown open as a street and thoroughfare and be made a part of Congress Street, and that such improvement be made by special assessment; Now therefore be it ordained by the Mayor and Common Council of the City of Tucson as follows:

SECTION 1. That Congress Street between Church Street and Pearl Street in this city be opened and widened so as to include all of the land now lying in Block 206 of this city, bounded on the East by Church Street, on the South by Congress Street, on the West by Court Street and on the North by Maiden Lane; and so as to
257 include also a portion of Blocks numbered 199, 201 and 202, fronting upon Congress Street, and being a strip off the Southerly portion of said Blocks of the uniform depth throughout, between the said Court Street and the said Pearl Street, of 39½ feet measure in a Northerly direction at right angles to the Northerly line of said Congress Street.

SECTION 2. That proceedings be at once instituted by the proper officers of this City for the purpose of having said premises and the improvements thereon condemned; and for making just compensation therefor to the end that the legal right and title to remove the said improvements, and convert the said described lands to public use, shall vest in this City.

SECTION 3. That all of that part of Maiden Lane lying between Church Street on the East, and Meyers Street on the West and all of the premises described in Section 1, after the condemnation and removal of the improvements thereon, shall become a part of said Congress Street for public use.

SECTION 4. All costs, damages and expenses incurred in carrying out the provisions of this Ordinance shall be defrayed by
258 special assessment to be levied upon the several lots, blocks tracts and parcels of land within this City that shall be benefitted by said improvement, in the proportion in which they will be severally benefitted by such improvement; and all such costs, damages and expenses, and the amount necessary to pay the same shall be ascertained and determined, and the assessment apportioned and levied accordingly by such Commissioners as are provided for in Section 30 of Act No. 57 of the Territorial Legislative Assembly. Approved March 18, 1897 and amendments thereto.

SECTION 5. This Ordinance shall be in effect from and after its passage and approval.

Passed and adopted by the Mayor and Common Council of the City of Tucson this 28th day of August A. D. 1901.

Approved August 28, 1901.

C. F. SCHUMACHER, *Mayor.*

Attest:

N. E. HAWKE,
Recorder and Ex Officio City Clerk.

TERRITORY OF ARIZONA, *County of Pima, ss:*

259 I, F. S. Treat, Recorder and *Ex-Officio* Clerk of the City of Tucson, County of Pima, Territory of Arizona, hereby certify that the foregoing is a true, correct and exact copy of Ordinance No. 151 passed and adopted by the Common Council of the City of Tucson the 28th day of August, 1901, which is on file in my office.

In witness hereof I have hereunto set my hand and seal this 11th day of January, 1906.

[SEAL.]

FRANK S. TREAT,
Recorder and Ex Officio City Clerk.

Ordinance 149, Providing for Widening Congress Street Between Stone Avenue and Church Street, in the City of Tucson, Arizona.

Whereas a petition has been filed with the City Recorder, signed by the owners of a majority of the lineal frontage of property upon Block 207 in this City, and praying that proceedings be taken to condemn all private property in said Block 207, and that the land embraced therein be thrown open as a Street and thoroughfare, and be made a part of said Congress Street, and that such
260 improvements be made by special assessment;

Now therefore, be it ordained by the Mayor and Common Council of the City of Tucson, as follows:

SECTION 1. That Congress Street between Stone Avenue and Church Street in this City be opened and widened so as to include all of the land now lying in Block 207 of this City, bounded on the East by Stone Avenue, on the South by Congress Street, on the West by Church Street, and on the North by Maiden Lane.

SECTION 2. That proceedings be at once instituted by the proper officers of this City for the purpose of having said premises, and the improvements thereon condemned and for making just compensation therefor to the end that the legal right and title to remove the said improvements, and to use, occupy and enjoy the said premises as a public street, shall vest in the City.

SECTION 3. That all of that part of Maiden Lane lying between said Stone Avenue and said Church Street in this City, shall,
261 after the removal of said improvements upon said Block 207 become and be known as a part of Congress Street.

SECTION 4. All costs, damages and expenses in carrying out the provisions of this Ordinance, shall be defrayed by special assessment upon the several lots, blocks, tracts and parcels of land in this City to be benefitted by said improvement in the proportion in which they will be severally benefitted by said improvement; All of said costs, damages and expenses to be ascertained and determined, and the amount necessary to pay the same to be raised by assessment according to benefits, and ascertained and apportioned by said Commissioners as are provided for in Section 30 of the Act of the Territorial Legislative Assembly, approved March 18th, 1897, and Amendments thereto,

SECTION 5. Ordinance No. 145 and the Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

SECTION 6. This Ordinance shall be in effect from and after its passage and approval.

Passed and adopted by the Mayor and Common Council of
262 the City of Tucson, this 23rd day of May A. D. 1901.

Approved May 23, 1901.

C. F. SCHUMACHER, *Mayor.*

Attest:

N. E. HAWKE,
Recorder and Ex Officio City Clerk.

TERRITORY OF ARIZONA, *County of Pima, ss:*

I, F. S. Treat, City Recorder and *Ex Officio* Clerk of the City of Tucson, County of Pima, Arizona Territory, hereby certify that the foregoing is a true, correct and exact copy of Ordinance No. 149, passed and adopted by the Mayor and Common Council of the City of Tucson, May 23, 1901, which is on file in my office.

In witness whereof I have hereunto set my hand and seal this 13th day of January, 1906.

[SEAL.]

FRANK S. TREAT,
Recorder and Ex Officio City Clerk
of the City of Tucson, Arizona.

Title and Cause.

Comes now the defendants, Allan R. English, and Honora
263 English, by their attorney W. P. Miller, and moves the Court for a new trial herein and to vacate the findings of fact, conclusions of law and decree herein for the following reasons and upon the following grounds to-wit:

1.

Because the Court erred in admitting and rejecting evidence upon the trial of this cause.

2.

Upon the grounds that the evidence does not sustain the finding of fact, conclusions of law and decree herein.

3.

Upon the ground that the evidence does not sustain the judgment and decree herein.

4.

Because the Court erred in over-ruling defendants' plea in abatement herein.

W. P. MILLER,
Attorney for Defendants.

The Honorable, the Mayor and Common Council of the City of Tucson:

Whereas, The private use and occupancy of that certain piece of property known and described on the official map of the
264 City of Tucson as Block Two Hundred and Six (206) in the said City are detrimental and injurious to the public interests of the City of Tucson and the citizens thereof, and interfere with and block the conduct and progress of business in the heart of said City: and

Whereas, under the provisions of an Act entitled "An Act Adding to the Powers and Privileges Already Vested by Charters in Incorporated Cities," duly passed by the 19th Legislative Assembly of the Territory of Arizona and amendments thereto, and approved by the Governor of said Territory, power and authority are given your honorable body to take such action as may be necessary and advisable in matters of this kind; and

Whereas, the lineal frontage of property fronting on the south side of West Congress Street, between South Church Street and the continuation of Church Plaza facing West Congress Street, is Three Hundred and Eighteen and Five one-hundredth- (318.05) feet, not including a street commonly called Davis Alley, and the lineal frontage of property lying on the north side of Maiden Lane, between North Church Street and Court Street, is Two Hun-
265 dred and Seventy-one and Ninety-two-one-hundredth- (271.92) feet; and

Whereas, all the property lying on the South side of Congress Street and the North side of Maiden Lane, and within the boundaries named will be specially benefitted thereby;

Now, therefore, We, the undersigned owners of a majority of the lineal feet lying along the South side of Congress Street and the north side of Maiden Lane, within the boundaries hereinbefore named, all of which said property is in Blocks 197, 210, and 211, respectfully petition your Honorable Body that proceedings be taken in the name of the City of Tucson, to condemn all private property in said Block 206, and that the land embraced therein be thrown open as a street and th-roughfare, and that all the land embraced between what is now the South side of Congress Street, the North side of Maiden Lane, the West side of North Church Street and the east side of Court Street, be made into one Street and th-roughfare which shall be known as, and be a part of Congress Street in the said City of Tucson, and that an equitable percentage of the expense of converting the said Block 206 into a street as aforesaid, be levied by special
266 assessment upon the property owners adjacent to the said improvements, upon a fair valuation of appraisement.

Name.	Lineal Ft.	Block.	Lot.
B. Hattick	54.78-100	197	3
C. F. Schumacher	66.66-100	197	4
Ezra C. Bartlett	35.95-100	210	3
Maria Morrison		210	

By Royal A. Johnson.

P. Charouleau.
Wm. C. Davis.
Chas. De Groff ..... 149 ft.

John Sroufe and Hugh McCrum, by H. D. Underwood, their attorney in fact.

Allen R. English, by Rochester Ford his attorney in fact.

H. B. Tenney, executor estate W. C. Davis.

Mattie E. Davis.

The followinng additional named were submitted to the Council on this petition, June 19, 1903.

Allen R. English, by R. Ford, Att'y in Fact.

H. B. Tenney, Executor Est. W. C. Davis.

Mattie E. Davis.

Attest:

N. E. HAWKE,
City Clerk Pro Tem.

Endorsements: Petition of a majority of lineal frontage fronting on Block No. 206 for condemnation of said Block for street
267 purposes. Filed April 8, 1901. N. E. Hawke, City Clerk. 3409. Plaintiff's Ex. A., City of Tucson *vs.* Lizzie J. Woods, *et al.*, Filed Dec. 2, 1903, Clinton D. Hoover, Clerk. No. 3814. In

the District Court of the First Judicial District of the Territory of Arizona, in and for the County of Pima. Territory of Arizona *vs.* A. R. English, *et al.*, Defendant's Exhibit 2. Filed Dec. 14, 1905. Clinton D. Hoover, Clerk.

Bond on Appeal omitted by direction of Appellant.

268 Endorsed: No. 974. In the Supreme Court of the Territory of Arizona. The Territory of Arizona at the Relation and to the Use of John W. Bogan, Treasurer and *Ex-Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Plaintiff and Appellee *vs.* A. R. English and Honora English, his wife, Defendants and Appellants. Abstract of Record Filed this 22 day of Sept. A. D. 1906. S. M. Cullom, Clerk, By Angie B. Parker, Deputy. W. P. Miller, Attorney for Defendants and Appellants.

269 In the Supreme Court of the Territory of Arizona.

A. R. English and Honora English, His Wife, Appellants,

vs.

The Territory of Arizona at the Relation and to the Use of John W. Bogan, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

Motion to Dismiss Appeal.

Comes now the Appellee and moves to dismiss the appeal of the Appellant in the above entitled cause, and for grounds of such motion shows:

1. That the records of this Court show that the appeal in the above entitled cause was perfected by the filing of an appeal and supersedeas bond on the 23rd day of February, 1906:

2. That thereafter and on the 2nd day of May, 1906, the original record of said case, together with a copy of all minute entries made in the case, properly certified, was filed in this Court. That under and by virtue of the provisions of Paragraph 1582, Revised Statutes of Arizona, said Record should have been filed in this Court within thirty days after the perfection of the appeal herein, whereas,

270 as is shown by the Records of this Court more than sixty days elapsed before the filing of said record, after the appeal herein had been perfected.

3. That under and by virtue of the provisions of Paragraph 1586, Revised Statutes of Arizona, the appellant was required at a time not later than twenty days next after the filing of the record in this Court, to file herein six copies of his brief and argument: That more than ninety days have elapsed since the filing of the record in this Court, as is shown by the records of this Court, but the appellant has failed and still fails to file any copies of his brief and argument whatsoever.

4. That under and by virtue of the provisions of Section 1, Rule 1 of the Rules of this Court, the appellant was required to file six copies

of an Abstract of the Record with this Court, with the transcript of the Record: That appellant has failed and refused and still does fail and refuse to file the same, as the records of this Court will show.

5. That under and by virtue of the provisions of Section 5 of Rule 4 of the Rules of this Court, appellant was required to file six copies of his brief in this Court within thirty days next after the appeal in said cause was perfected: That more than six months have elapsed since the perfection of the appeal in this cause, and appellant has failed and refused, and still does fail and refuse to
271 file his said brief.

Wherefore and by virtue of the premises aforesaid, Appellee prays this Honorable Court to dismiss the said appeal for want of prosecution, and affirm the decision of the Court below.

S. L. KINGAN,
Attorney for Appellee.

(Endorsed:) No. 974. In Supreme Court, Territory of Arizona. A. R. English and Honora English, his wife, Appellants, *vs.* The Territory of Arizona, at the relation of John W. Bogan, Treasurer, etc., Appellee. Motion to dismiss appeal. Filed Aug. 10, 1906. S. M. Cullom, Clerk. By Angie B. Parker Deputy.

272 In the Supreme Court of the Territory of Arizona.

A. R. ENGLISH and HONORA ENGLISH, His Wife, Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

TERRITORY OF ARIZONA, *Pima County, ss:*

John B. Wright, being by me first duly sworn on his oath says that he is of counsel for the appellee in the above entitled cause. That a copy of the "motion to dismiss appeal" heretofore filed herein, was mailed to W. P. Miller, the attorney for the appellants, on the 9th day of August, 1906. That the said copy was mailed to the said Miller as aforesaid on said date by registered mail, together with a letter dated August 9th, 1906, addressed to said Miller and signed Kingan and Wright; that thereafter, and on August 13th, the receipt of the said W. P. Miller of the said letter and "motion to dismiss appeal," was returned; that attached hereto is a true copy of the "motion to dismiss appeal," as the same was heretofore filed in this court, and as the same was so mailed to the said Miller;
273 that attached hereto, is the letter of said Kingan and Wright to said W. P. Miller, accompanying such motion. That attached hereto is the receipt of the Post-Office, showing that said letter and motion were registered to the said W. P. Miller, and that also attached hereto is the receipt returned through the Post-Office of the said W. P. Miller, showing the receipt of the said letter and motion; that affiant is well acquainted with the signature of said

W. P. Miller, and that the signature attached to said receipt is his signature.

JOHN B. WRIGHT.

Subscribed and sworn to before me, this 21st day of November, 1906.

My commission expires Oct. 5, 1910.

[SEAL.] MAYME PERRY,
Notary Public.

(Attached hereto is Post Office Registry Receipt; also receipt of W. P. Miller for Registered letter.)

274 S. L. Kingan. John B. Wright.

Kingan & Wright, Attorneys at Law, Tucson, Arizona.

AUGUST 9TH, 1906.

W. P. Miller, Esqr., Attorney at law, Tombstone, Arizona.

DEAR SIR: Enclosed find copy of motion, which we have to-day mailed to Clerk of Supreme Court.

Very sincerely yours, KINGAN & WRIGHT.

Copy.

275 In the Supreme Court of the Territory of Arizona.

A. R. ENGLISH and HONORA ENGLISH, His Wife, Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

Motion to Dismiss Appeal.

Comes now the Appellee and moves to dismiss the appeal of the Appellant in the above entitled cause, and for grounds of such motion shows:

1. That the records of this Court show that the appeal in the above entitled cause was perfected by the filing of an appeal and supersedeas bond on the 23rd day of February, 1906:

2. That thereafter and on the 2nd day of May, 1906, the original record of said case, together with a copy of all minute entries made in the case, properly certified, was filed in this Court. That under and by virtue of the provisions of Paragraph 1582, Revised Statutes of Arizona, said Record should have been filed in this Court, within thirty days after the perfection of the appeal herein, whereas,
276 as is shown by the Records of this Court more than sixty days elapsed before the filing of said record, after the appeal herein had been perfected.

3. That under and by virtue of the provisions of Paragraph 1586,

Revised Statutes of Arizona, the appellant was required at a time not later than twenty days next after the filing of the record in this Court, to file herein six copies of his brief and argument: That more than ninety days have elapsed since the filing of the record in this Court *have elapsed*, as is shown by the records of this Court, but the appellant has failed and still fails to file any copies of his brief and argument whatsoever.

4. That under and by virtue of the provisions of Section 1, Rule 1 of the Rules of this Court, the appellant was required to file six copies of an Abstract of the Record with this Court, with the transcript of the Record: That appellant has failed and refused and still does fail and refuse to file the same, as the records of this Court will show.

5. That under and by virtue of the provisions of Section 5 of Rule 4 of the Rules of this Court, appellant was required to file six copies of his brief in this Court within thirty days next after the appeal in said cause was perfected: That more than six months have elapsed since the perfection of the appeal in this cause,
277 and appellant has failed and refused, and still does fail and refuse to file his said brief.

Wherefore and by virtue of the premises aforesaid, Appellee prays this Honorable Court to dismiss the said appeal for want of prosecution, and affirm the decision of the Court below.

KINGAN & WRIGHT,
Attorney- for Appellee.

(Endorsed:) No. 974. In the Supreme Court, Territory of Arizona. A. R. English and Honora English, Appellants *vs.* The Territory of Arizona, on the Relation of Bogan, etc. Appellee. Proof of Service of Motion to Dismiss Appeal. Filed Nov. 23, 1906. S. M. Cullom, Clerk. By Angie B. Parker, Deputy.

278 In the Supreme Court of the Territory of Arizona.

No. 974.

ALLAN R. ENGLISH *et ux.*, Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex-Officio* Tax Collector, Appellee.

Appeal from District Court, Pima County. Before Justice Campbell.

James Reilly, W. P. Miller, and A. C. Baker, for appellants.

S. L. Kingan, William M. Lovell, and John B. Wright, for appellee.

Opinion by SLOAN, *J.*:

This is a suit brought in the court below by the Treasurer and *Ex-Officio* Tax Collector of Pima County in the name of the Territory against Allan R. English and his wife to collect a delinquent

special assessment levied by the City of Tucson against the property of the defendants to the suit. The assessment was levied under the provisions of Chapter 2 of Title 11 of the Revised Statutes to pay, in part, for the improvement of Congress street in said City. The improvement consisted of the widening of said street by the condemnation of Block 206, commonly known as "The Wedge." The amount assessed against the property of the defendants to the action was the sum of Twelve Thousand Five Hundred Thirty-Three Dollars and Seventy-five cents. The prayer of the complaint
279 was for this amount with interest and costs. Judgment was entered for plaintiff in the action, and from this judgment the defendants have appealed.

The first question presented for our consideration by the appellants is as to the right of the Territory, at the relation of the Treasurer and *Ex-Officio* Tax Collector of Pima County, to bring this suit. The assessment was levied in December, 1903. Warrant for the collection of this assessment was issued by the Mayor and Recorder of the City to the City Assessor and Tax Collector on the 15th day of February, 1904. The assessment became delinquent on December 21st, 1904. Thereafter the City Tax Collector made a report of all the delinquent special assessments, to the Treasurer and *Ex-Officio* Tax Collector of Pima County, who thereupon incorporated said list, including the special assessment levied against the property of appellants, with the county delinquent list. The said special assessment was thereafter and for the year 1904 entered upon the back tax book of said county. The said Tax Collector thereupon brought this suit.

It is contended by counsel for appellants that act No. 92 of the laws of 1903, providing for suits to be instituted to recover delinquent taxes by the Tax Collectors of the several counties in the name of the Territory has no application to delinquent special assessments levied by cities under the provisions of said Chapter 2, Title
280 11 of the Revised Statutes.

Paragraph 483 of the Revised Statutes, being Section 19 of said Chapter 2, Title 11, provides that when the City Collector shall be unable, before the 21st day of December of the year in which any such special assessment is made, to collect any such special assessment, he shall deliver the delinquent list of all the lands, town lots and real property upon which he shall have been unable to collect such special assessments, with the amount of the same due and unpaid, to the Tax Collector of the county, who shall incorporate said list with the county delinquent list. The next Section provides that the Tax Collector of the county shall sell delinquent city property for city delinquent special assessments at the same time and in the same manner as real property is required to be sold by law for county and territorial delinquent taxes.

These sections considered alone might well be construed as excluding any other method of collecting delinquent special assessments than as therein provided which was the method provided by the general revenue laws of the Territory for the collection of delinquent taxes on real property in force at the time Chapter 2, Title 11, took

effect. We think, however, that paragraph 488 should be construed with paragraph 484 in this connection. Paragraph 488 reads:

"The general revenue laws of this territory in reference to proceedings for the collection of delinquent taxes on real property, the sale thereof, the executions of certificates of sale and deeds thereon, the force and effect of such deeds and sales; and all other laws in relation to the enforcement and collection of delinquent taxes and redemption of tax sales, except as herein otherwise provided shall be applicable to proceedings to collect such special assessments."

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Act 92 of the laws of 1903 repealed the general revenue law of the Territory in reference to proceedings for the collection of delinquent taxes on real property. By this act the Tax Collector was deprived of his power to sell real property for delinquent taxes levied thereon. In lieu of such sale the statute provided for suits to be instituted against the several delinquent tax payers by the Tax Collector in the name of and for the use of the Territory. Unless, therefore, the act of 1903 applies to delinquent special assessments there would be no method provided by the existing statutes for the sale of delinquent city property for delinquent special assessments. A reading of Section 84 of the act will make it clear that the intent of the legislature was to make the method of collecting delinquent taxes provided for in the act applicable to all delinquent taxes which may appear on the tax roll. Said Section reads:

"Within sixty days after the taking effect of this chapter, and every year thereafter, within thirty days after the settlement of the tax collector, the several clerks of the county boards of supervisors in each county in this territory, shall make in a book to be called the "back tax book" a correct list in numerical order of all tracts of land and town lots on which back taxes shall be due in such county, city or town, setting forth opposite each tract of land or town lot the name of the owner," etc.

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Again, Section 96 of said act reads:

"All back taxes, of whatever kind, appearing due upon delinquent real estate shall be extended in the "back tax book" made under the chapter, and collected by the tax collector under authority of this chapter."

We conclude, therefore, that this suit has properly been brought in the name of the Territory, at and by the relation and to the use of the Treasurer and Tax Collector of the county.

It is further claimed by the appellants that the assessment made by the city against their property was erroneous for two reasons: First, that the committee appointed under the provisions of paragraph 472, being Section 8 of Chapter 2, Title 11, to estimate what proportion of the cost of the improvement made should be taxed against the property of appellants, erred in the respect that it divided the cost of the improvement by the arbitrary front foot rule and assessed the property of appellants upon that basis and not upon the basis of benefits derived from such improvement. Second, it improperly assessed the property of appellants in that the committee took into consideration the value to appellants of a certain narrow strip of land lying between the lot of appellants and Congress street

left open and unoccupied in the widening and improvement of said street.

Even should the record sustain counsel for appellants in their contention that the committee, in the respects named, improperly assessed the property of appellants it does not follow that the
283 latter may successfully defend this suit upon these grounds.

The general rule applicable to all assessments is stated in Stanley *vs.* Supervisors, 121 U. S. 550, as follows:

"In nearly all the states, probably in all of them, provision is made by law for the correction of errors in irregularities of assessors in the assessment of property for the purposes of taxation. This is generally through boards of revision or equalization, as they are often termed, with sometimes a right of appeal from their decision to the courts of law.

To these boards of revision, by whatever name they may be called, the citizen must apply for relief against excessive and irregular taxation, where the assessing officers had jurisdiction to assess the property. Their action is judicial in its character. They pass judgment on the value of the property upon personal examination and evidence respecting it. Their action being judicial, their judgments in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out by statute, they are conclusive, whatever errors may have been committed in the assessment."

Paragraph 478, Revised Statutes, provides that:

"If the owner of any parcel of land assessed for such improvement by special tax feels himself aggrieved by reason of the determination made by the common council, he may within twenty (20) days after the date of such determination, appeal therefrom to the district court:"

Paragraph 479 provides that:

"The appeal given by the last section shall be the only remedy of the owner of any parcel of land, or of any person interested therein, affected by said improvement, for the redress of any grievance he may have by reason of the making of such improvement."

We construe the latter paragraph to mean that the remedy by appeal excludes all other remedies where the grievance complained of is one that the common council has power to remedy. The
284 common council would not have the power to remedy any grievance arising from some jurisdictional defect in the proceedings which would render subsequent proceedings void. There could be no doubt but that, under the statute, if the committee had erroneously assessed the property of appellants by applying an arbitrary front foot rule, or by improperly including a possible use by appellants of a vacant piece of ground belonging to the city as among the benefits accruing to the property of appellants by reason of the improvement made, such errors were within the power of the common council to correct so as to give validity to subsequent proceedings.

It is quite clear, therefore, that under the statutes above quoted the only remedy available to the appellants for the correction of any irregularity in the assessment in any of the respects complained of was an appeal to the district court within twenty days after the com-

mittee had reported its action to the common council and the latter had made its determination by affirming the report.

Counsel for appellants seek to avoid the effect of the statute with the suggestion that appellants had no notice, actual or constructive, of the time when the common council would act upon the report of the committee, and had no notice actual or constructive, of the actual determination of this matter by the common council until
285 after the statutory time for taking the appeal had elapsed and that, therefore, appellants had no opportunity to avail themselves of the remedy by appeal.

The statute does not provide for notice to the property owners affected of the time when the common council shall act upon the report of the committee, and the record does not show that any such notice was given. The statute does provide for notice to be given such property owners of the time and place of the hearing by the assessment committee.

It is shown by the record and found by the court that the appellants did receive such notice and were represented before the committee at the time the assessment was levied. Following the analogy of court proceedings the appellants had their "day in court" and being in court were chargeable with notice of all proceedings thereafter taken in accordance with the statute. It was their duty, in case they desired to appeal from the action of the common council, to follow up the proceedings and ascertain what was being done. It is not pleaded, nor was it attempted to be shown by appellants, that fraud was practiced upon them which prevented their ascertaining the time when the confirmation was to be made and from taking their appeal within the statutory time thereafter. We think the appellants, by failing to appeal, have lost their remedy for correcting any errors which may have been made by the assessment
286 committee in assessing the special tax against their property.

Another reason which may be urged against the right of appellants to raise these objections in this connection arises under a provision in paragraph 483, Revised Statutes. This provision is as follows:

"And in any action before any court, wherein the question of the validity of such assessment is an issue, no defense or objection shall be made or heard, which might have been interposed in the proceedings for the making of such assessment or the application for the confirmation thereof."

As we have stated, the record discloses that the appellants had notice of the proceedings for the making of the assessment and were actually represented at the time of the assessment before the assessment committee. It does not appear that they made any objection to the assessment either to the committee or to the common council. They are, therefore, under the statute, concluded from raising the objections specified in this proceeding as a defense to the action.

The objection raised to the proceedings by appellants, that the property was not subject to the special assessment for the reason that it was not contiguous to the improvement made, cannot avail them, inasmuch as the complaint states that their property was so con-

tiguous, which allegation is not controverted by the answer, and must, therefore, be taken to be true.

287 Evans *vs.* Glencross, 4 Ariz., 222.

We find no reversible error in the record and judgment is therefore affirmed.

RICHARD E. SLOAN,
Associate Justice.

We concur:
EDWARD KENT, *C. J.*
FLETCHER M. DOAN, *A. J.*
FREDERICK S. NAVE, *A. J.*

(Endorsed:) No. 974. In the Supreme Court of the Territory of Arizona. Allen R. English *et al. vs.* Territory of Arizona. Opinion by Sloan, J. Filed March 22, 1907. F. A. Tritle, Jr., Clerk.

288 In the Supreme Court of the Territory of Arizona.

No. 974.

ALLEN R. ENGLISH and WIFE, Appellants,

vs.

THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex-Officio* Tax Collector, etc., Appellee.

Amended Petition for Rehearing.

Now come the appellants and respectfully move this honorable Court for a rehearing of the above entitled case, and for cause respectfully show to the Court:

I.

From reading the opinion of the Court, it appears to us that the Court misapprehended both the law and the facts of the case in several particulars.

Because the statutes, which, with amendments, is now Chapter 2, Title 2, of the Revised Statutes, was first enacted by Act No. 57, Session Laws of Arizona of 1897, and Section 18 of that Act reads thus:

"When the said general officer shall receive the report provided "for in the preceding section, he shall proceed to obtain judgment "against said lots, parcels of land and property for said assessments "remaining due and unpaid at the same time and in the same "manner as is or may be by law provided for obtaining judg-
289 "ment against lands for taxes due and unpaid the county "and Territory," etc., etc.

And thereafter Act No. 66, of the Session Laws of 1899 (20th Legislature) to amend the said Act No. 57, which, by Sections 1,

2 and 3, made certain verbal amendments to Section 4, 5 and 17 of that Act No. 57 (not material in this case), but by Sections 4, 5 and 6 amended Sections 18, 22 and 29, making Section 18 to read as follows:

"Upon the delivery of such delinquent list to the county collector "of taxes of such county, such county collector shall deliver to said "city collector his receipt," etc., etc.,

and continuing:

"Upon the receipt of said delinquent list it shall by the duty of "the county collector to incorporate said list with the county delin- "quent list, noting in such list what property is delinquent for such "special assessment by placing the words, "City of ——, Special "Assessment," at the head of a separate column containing the said "city delinquent special assessment, and he shall sell such delin- "quent city property at the same time and in the same manner, for "such city delinquent special assessment, as real property is required "to be sold by law for county and Territorial delinquent taxes, giv- "ing the same notice as is now or may be required by law in regard "to sales of real estate for delinquent county and Territorial taxes. "The county collector must collect, in addition to the taxes due on "such special assessment, such penalties, interest and costs as are "provided by law to be collected on property delinquent for county "and Territorial taxes."

This is now Paragraph 484 (Section 20), Revised Statutes of Arizona.

290 We submit that, by thus amending the statute taking away from the county tax collector the power to sue for special municipal assessments, the intention of the law-maker was plainly expressed.

And when the same Legislature, in said Act No. 66, and in the next section, amended Section 22, of Act No. 57, of 1887, to read as it now reads in Paragraph 488, Section 24, of the Revised Statutes, cited in the opinion of the Court, it cannot be reasonably construed as intended to restore the same power to sue. To so construe the two sections would be to stultify the Legislature.

And the next section, No. 6, amended Section No. 29 of said Act No. 57, to read as it now reads in Paragraph 495 (Section 31), and gave the municipality power to sue by its own tax collector.

And these three (3) consecutive sections must be construed together, and so construed, the first, No. 4, took away the power of the county tax collector to sue for special municipal assessments.

And No. 5, though giving the city all remedies for the collection of special city assessments, does not appoint any officer to sue.

And No. 6 does give the city an ample remedy by suit in its own name by its own tax collector.

And we have another expression of the Legislature intent
291 in Act No. 10, of the 22nd Legislature, because in Section No. 5 of that Act, on page 17, second period from the bottom, we find these words:

"If no such appeal shall have been taken as aforesaid, it shall be

"the duty of such city or town treasurer, within ten days after the "expiration of the said twenty days, to levy said precept upon the lot "or land therein described and to sell the same or so much thereof "as may be necessary to pay such assessments, with costs and "charges."

This Act by its title grants additional powers and privileges to incorporated cities and towns. True, it refers to improvements "made by contract," but if there was already an officer empowered to sue for special municipal assessments, why appoint another officer to sell? And this Act was passed at the same session as Act No. 92 of the said 22nd Legislature, 1903.

And that Act No. 92 is a very drastic and punitive statute, plainly intended to catch and punish tax-dodgers, and for no other purpose, and to construe it as applying to special municipal assessments is plainly a strained construction.

And special city assessments are not within the words, nor in any sense within the purview of said Act No. 92, and such a punitive statute should not be construed to extend to a case not within its express words, and put a burden on a litigant of 25 per cent. and 4 per cent. as costs.

I think it is a cardinal rule that costs can only be allowed
292 by express provision of Statute. Granting remedies does not mean granting extraordinary costs.

And we respectfully ask this honorable Court to construe Sections 4, 5 and 6 of the Act No. 66, Laws of 1899, together, and also with this Act No. 92, Laws of 1903, and from a careful examination, we think that it will appear that this suit was not brought in the name of a party in interest nor by a person expressly authorized by statute.

But it appears from the opinion of this honorable Court that the Court took it for granted that in this case there was a county tax delinquent, with which the county collector should incorporate the city delinquent list, as required by said Paragraph 484 (Section 20), Revised Statutes, and if there was such county delinquent list, though we still think he was not authorized to sue, but to sell, yet we admit that our objection of want of facts and want of proper party to sue could not be sustained, because then the county tax collector would be expressly authorized to sue in the name of the Territory, at least for that much, as provided by Section 87, of Act No. 92, Laws of 1903, but in this case there was no county or Territorial tax, not even a city tax—nothing but a special assessment.

And the power to sell given by Paragraph 484, as amended, was not in any way affected by the said Act No. 92, because that paragraph did not depend on the existence or non-existence of the then law for the collection of Territorial and county taxes. It
293 merely referred to the mode, time, penalties and costs then existing for the collection of Territorial and county taxes, and Act No. 92 was not on the same subject.

And both these laws could well stand together, each having the proper effect. The county tax collector could well sue for county and Territorial taxes as authorized by Section 87, of Act No. 92, Laws of 1903, and could sell for special city assessments as authorized by

Section 4, of Act No. 66, Laws of 1899 (now Paragraph 484, Revised Statutes.)

Thus we see that the city had two good and ample remedies, without resorting to the remedy taken in this case, but neither of these remedies would add $4,000 in fees for the collector and his counsel and thereby completely confiscate the property by adding that sum to an already plainly unjust assessment, an assessment confessedly opposed to the proviso in Paragraph 472 (Section 8), Revised Statutes of Arizona, which says at the end of the Paragraph, "Provided, that no lot, block or tract of land shall be assessed at a greater amount than it will be actually benefited." And it plainly appears from the proceedings of the assessing commissioners of December 15th and 25th, 1903 (ab. folios 613 to 617) and resolution of the Common Council No. 108 (ab. folios 720 to 727) that this assessment was largely based on imaginary benefits to be conferred by giving
294 that part of Maiden Lane fronting on lot 5, block 197, and a three cornered strip of the block condemned No. 206, to the appellants, which they did not want, and which neither the commission nor the city could give, because the petition for the condemnation, the ordinance No. 168 (ab. folios 483 to 490) and the judgment of the Court based thereon, was to remove the improvements on block 206, to widen Congress Street up to Maiden Lane.

This was a plain attempt to sell land at an arbitrary price fixed by the seller, to an unwilling party, and to which land the seller could not give title.

But it is contended, and so far sustained, that the appellants forfeited all the right to object to the assessment because of neglect to appeal from the confirmation of this assessment, made at a special meeting, without notice to any one, on December 30th, 1903. (See ab. folios 714 to 719), resolution No. 100, and testimony of City Recorder Treat (ab. folios 343 and 349).

The statute, Paragraph 1299 (Section 20), Revised Statutes of Arizona, says, "A person expressly authorized by statute may sue," etc. but the Court says, "A person impliedly authorized by statute may sue," and this strained construction has the effect of adding to an already enormous assessment nearly $4,000 as punitive fees and costs.

295 The three consecutive sections, Nos. 4, 5 and 6, of Act No. 66, of the Session Laws of 1899, amending Act. No. 57 of the Session Laws of 1897, should be construed together, and with Section 18, of the said Act No. 57, which plainly did grant to the county tax collector the power to sue for municipal special assessments, and which power was as plainly taken away by Section 4, of said amending Act No. 66, and the power to sell substituted therefor, and though the next section, No. 5, now Paragraph No. 488, does provide that "The general revenue laws of this Territory in reference to proceedings for the collection of delinquent taxes on real property, the sales thereof, etc., except as herein otherwise provided, shall be applicable to proceedings to collect such special assessments," yet not a word expressly appointing any one to sue. But the next section, No. 6, does expressly appoint an officer to sue, to-wit, the city tax collector, that section being now Paragraph 495, Revised Statutes.

And Paragraph 494, just preceding Paragraph 495, Revised Statutes, in the second sentence thereof says, "And the same proceedings may be resorted to by the collector upon any warrant or order issued or made for the collection of special assessments as in the case of the collection of Territorial and county taxes under the general laws of the Territory." And it is plain that the warrant or order and the collector here mentioned are the warrant mentioned in Paragraph 480, and the collector is the city tax collector named
296 in that Paragraph 480, Revised Statutes.

It therefore appears, at least to us, that when the Legislature by the amendatory Act No. 66, of the laws of 1899, in Section 4, amended Section 18, of the prior laws of 1897, by taking away from the county collector the power to sue for special city assessments, and substituted therefor the power to sell, and also by Section 5, amending Section 22, of the said prior Act, by excluding therefrom the words "to recover judgments for delinquent taxes," and leaving it to read as it now reads in Paragraph 488, Revised Statutes, and in the two after sections, 494 and 495, giving remedies to be enforced by the city tax collector, it could not mean to restore the authority taken away by Section 4, of that amending Act, which is now Paragraph 484, Revised Statutes.

And if we are right in these conclusions, it is plain that this suit was not prosecuted in the name of the real party in interest nor by a person expressly authorized by statute, as required by Paragraph 1299, Revised Statutes of Arizona, and the complaint did not therefore state a cause of action in favor of either the Territory of Arizona or the tax collector of Pima County.

And now, inasmuch as counsel for appellee in their last reply brief at pages 9 and 10 have said:

"It must be conceded that after December 21st, 1904, and when
"the city officer had made his return to the county officer, the
297 "city might no longer act in the matter, and this being true,
"appellant's contention amounts to this, (*a*) the city is power-
"less to collect its assessments," etc., with much more of the same kind.

We take the liberty of attaching hereto as Exhibit A a certificate of the clerk of the District Court of Pima county, showing that about ten months before the date mentioned, to-wit, in February, 1904, John B. Wright, Esq., city attorney of the city of Tucson, also attorney and a witness for appellee in this case, brought suit in the same court in the name of the said city at the relation of its tax collector against the appellants in this case and others for the collection of the same special assessment, which suit has been continued from time to time and is still pending:

Because, first, it shows that the present suit was not brought for the *bona fide* purpose of collecting the special assessment, but for the purpose of speculating on the possible error of the courts in construing these various sections, and thereby obtaining about $4,000 in punitive costs and fees; and,

Second, it shows that counsel for appellee have knowingly and deliberately attempted to deceive this Court, while knowing that

they had a good remedy pending under Paragraphs 494 and 495, Revised Statutes.

298 *In Conclusion.*

If, after examination of the sections of the law herein cited, this honorable Court should still adhere to its former opinion that Paragraph 488 does expressly authorize the county tax collector to sue for special city assessments as provided by Paragraph 1299, Revised Statutes, then we respectfully request this Court to examine the judgment (ab. folios 310 and 311) and correct the judgment as to interest and fees, because:

First. There is nothing in the record and no law of this Territory authorizing the imposition of greater interest than 6 per cent., as authorized by Paragraph 2774, unless by contract in writing, yet the judgment allows 12 per cent.

Second. The words "4 per cent. on all sums collected," in Section 93, of Act No. 92, Laws of 1903, should not be construed to mean 4 per cent. on the aggregate of the judgment including interest and counsel fees. That would be fees on fees.

But it appears that counsel was anxious to make the confiscation complete.

Respectfully submitted,

JAMES REILLY,
Attorney for Appellants.

299 EXHIBIT A.

In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

CITY OF TUCSON *ex Rel.* JAMES FLYNN, Assessor and Tax Collector, Plaintiff,

vs.

ALLEN R. ENGLISH, HONORA ENGLISH, His Wife; DON A. SANFORD, LOUISA J. SANFORD, His Wife; FRANCISCO MORALES, LOUISA M. MATAS, and MARTIN COSTELLO, Defendants.

I, Allen B. Janes, Clerk of the District Court of the First Judicial District of the Territory of Arizona, in and for Pima County, do hereby certify that the above entitled cause, No. 3521, in said court, was commenced in the above entitled court on the 9th day of April, A. D. 1904, by John B. Wright, Esq., city attorney, as attorney for plaintiff. That the defendants, Allen R. English and Honora English, his wife, were duly served with summons in said cause, and appeared and answered the said complaint in said cause on the 9th day of May, A. D. 1904, by W. P. Miller, Esq., as attorney for said defendants. That said suit, among other things, was for the recovery of a special municipal assessment from said defendants for the

removal of block No. 206, in the said city of Tucson, and the
300 amount claimed in the complaint against the said defendants, Allen R. English and Honora English, his wife, was $12,533.75; and that said suit has been from time to time continued in said court and is still pending therein.

Witness my hand and the seal of said court, affixed this 17th day of April, A. D. 1907.

[SEAL.] ALLEN B. JANES,
Clerk as Aforesaid.

(Endorsed:) No. 974. In the Supreme Court of the Territory *Territory* of Arizona. Allen R. English and wife, appellants, *vs.* The Territory of Arizona, at the Relation and to the use of John W. Bogan, Treasurer and *Ex-Officio* Tax Collector, etc., Appellee. Amended Petition for Rehearing. Filed this 7th day of May, A. D. 1907. F. A. Tritle, Jr., Clerk. James Reilly, Attorney for Appellants.

301 In the Supreme Court of the Territory of Arizona.

No. 974.

ALLEN R. ENGLISH ET UX., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector of the County of Pima, in the Territory of Arizona, Appellee.

Appeal from the District Court in and for the County of Pima, Before Justice Campbell.

Mr. James Reilly, for appellant; Mr. A. C. Baker, of counsel.
Mr. S. L. Kingan, for appellee; Messrs. John B. Wright and Wm. M. Lovell, of counsel.

On Rehearing.

Per Curiam:

We have carefully reviewed the questions raised by this appeal in the light of the supplemental briefs filed upon the rehearing, but find no reason to change our views and decision as expressed in the opinion written by Mr. Justice Sloan upon the original submission of the cause. Our attention has been called, however, to a provision of the judgment which allows the statutory penalty of four per cent.
upon the full amount of the recovery, including the attorney
302 fee of twenty-five per cent. of the judgment. We think that the statutes contemplate that such penalty shall be computed only upon the amount of the recovery, exclusive of the attorney's fee.

The judgment will be modified by limiting the computation of

the four per cent. penalty to the amount of the judgment, excluding the attorney's fee; and as so modified the judgment will be affirmed.

EDWARD KENT, *C. J.*
RICHARD E. SLOAN, *A. J.*
FREDERICK S. NAVE, *A. J.*

Mr. Justice Doan and Mr. Justice Campbell not participating.

(Endorsed:) No. 974. In the Supreme Court of the Territory of Arizona. Allen R. English, *et ux., vs.* The Territory of Arizona, at the relation and to the use of John W. Bogan, Treasurer, etc. Opinion. Filed June 18, 1907. F. A. Tritle, Jr., Clerk.

303 In the Supreme Court of the Territory of Arizona.

ALLEN R. ENGLISH and HONORA ENGLISH, His Wife, Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

The above named appellants, Allen R. English and Honora English, his wife, conceiving themselves aggrieved by the final judgment entered on the — day of March, 1907, in the above named Court in the above entitled action, against them, the said appellants, and in favor of the Territory of Arizona, at the relation and to the use of John W. Bogan, Treasurer and *ex-officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, do hereby appeal therefrom to the Supreme Court of the United States, and said Allen R. English and Honora English, his wife, hereby pray that their said appeal be allowed, and that a citation be duly signed and issued, and that a transcript of the record, proceedings, evidence, opinion and judgment in the case, duly authenticated, may be sent
304 to the Supreme Court of the United States.

A. C. BAKER,
JAMES REILLY,
Their Attorneys.

And now, to-wit, on the 18 day of May, 1907, the above application having been duly presented and considered, it is hereby ordered that the appeal above prayed be allowed, and the same is hereby allowed, on filing a good and sufficient bond in the sum of one thousand dollars.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

(Endorsed:) No. 974. In the Supreme Court of the Territory of Arizona. Allen R. English and Honora English, his wife, Appellants, *vs.* The Territory of Arizona, at the relation and to the use of John W. Bogan, Treasurer, etc., Appellee. Application for Appeal to Supreme Court of the United States and Allowance of Appeal. Filed June 18, 1907. F. A. Tritle, Jr., Clerk.

305 In the Supreme Court of the Territory of Arizona.

No. 974.

THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Plaintiff and Appellee,

vs.

A. R. ENGLISH and HONORA ENGLISH, His Wife, Defendants and Appellants.

Statement of Facts on Appeal.

The Court certifies the facts to be as follows:

I.

That the said Territory is now and during all of the times mentioned in the complaint herein has been a public corporation, duly created and existing by virtue of law; that the said County of
306 Pima is now and during all of the times mentioned in the complaint herein has been a public corporation, duly created and existing by virtue of law, and is one of the political sub-division of the said Territory; that the City of Tucson, hereinafter mentioned, is now and during all of the times mentioned in the complaint herein has been a public corporation, duly created and existing by virtue of law, and situated within the said County of Pima; and that John W. Bogan aforesaid is now and during all of the times mentioned in the complaint herein has been the duly elected, commissioned, qualified, and acting Treasurer and *Ex-officio* Tax Collector in and for the County and Territory aforesaid, and is now and during all of the times mentioned in the complaint has been engaged in the discharge of his duties as such, under and by virtue of the laws of said Territory.

II.

That the defendant, A. R. English, is the owner of the following described town lot, situated in the City of Tucson, and in the said County of Pima and Territory of Arizona, to wit: Lot No. Five (5) in Block No. One Hundred and Ninety-seven (197), according
307 to the official survey of said city, and that said lot is contiguous to the improvement contemplated by Ordinance No. 168, hereinafter referred to. That the defendant Honora English was at the time of the commencement of this action, the wife of defendant A. R. English.

III.

That the above described city lot was, for the purpose and at the time, and to the amounts hereinafter set forth, subject to special assessment under the laws of the Territory of Arizona, and the said City of Tucson.

IV.

That heretofore, to wit, on the 19th day of June, A. D. 1903, the Mayor and Common Council of Tucson passed an ordinance entitled, "Ordinance No. 168, Providing for Altering and Widening Congress Street Between Church Street and Court Street, in the City of Tucson, Arizona," a true copy of which ordinance is attached to and made a part of the complaint in this action, and marked "Exhibit A."

V.

That before said ordinance was passed a petition for the making of the improvement described in said ordinance, signed by
308 the owners of a majority of the lineal frontage upon the improvement in said ordinance provided, was filed with the City Recorder of said City of Tucson, as set forth in said ordinance That the improvement contemplated by said ordinance was the condemnation and removal of Block No. 206, in said City of Tucson.

VI.

That thereafter suit was commenced in the said above named court, by the said City of Tucson as plaintiff, and Lizzie J. Woods and others as defendants, said defendants being the owners of said Block No. 206, which suit is numbered 3409; that in said action said court entered an order of condemnation of said Block No. 206, and the damages for the taking of said property, as contemplated in said ordinance, was adjudged to be the sum of Forty-six Thousand Five Hundred ($46,500) Dollars; that said damages were ascertained by the Court by evidence, produced at the trial thereof.

VII.

That thereafter and in said proceeding the plaintiff therein, to wit, the City of Tucson, filed a supplemental petition praying said
309 court to cause an assessment to be made for the purpose of raising the amount necessary to pay the compensation and damages which have been awarded to the property taken or damaged as aforesaid, with the cost of the proceeding. That thereafter, and on the 5th day of December, 1903, and in accordance with the prayer of said supplemental petition, said court appointed three Commissioners, residents of said city, to make such assessment and to ascertain, as near as may be, the costs incurred to the time of such appointment, and the probable further cost of the proceeding, including therein the estimated cost of making and collecting such assessment, and directing such costs to be included by such Commission in making such assessment. That one of the said Commissioners was the City Assessor of the said City of Tucson. That said Commissioners examined the locality where the said improvement was proposed to be made, and the lots, blocks, tracts and parcels of land that shall be benefited thereby, and estimated thereby what proportion of the total cost of such improvement would be of benefit to the public and what proportion thereof would be of benefit to the property to be benefited, and
310 apportioned the same between the city and such property so that each had its relative equitable proportion; and having

found such amounts, said Commissioners apportioned and assessed such amounts so found to be of benefit to the property, upon the several lots, blocks, tracts and parcels of land, in the proportion in which they were severally benefited by such improvement; but that no lot, block, tract or parcel of land was assessed by said Commissioners in a greater amount than it was actually benefited. Said Commissioners also made an assessment roll in which appears the names of the owners, so far as known, and a description of each block, lot, tract and parcel of land, and the amounts assessed as benefits thereto and in which said roll they set down as against the said city the amount they found as public benefit, and certified said assessment roll to the Common Council of such city within at least thirty days from the date of their appointment, to wit, the date hereinafter mentioned.

VIII.

That within five days after their appointment, to wit, on the 8th day of December, 1903, said Commissioners met and fixed a
311 time and place when and where they would meet to consider and decide upon such assessments, which time was not less than fifteen nor more than twenty days from the date of their appointment, to wit, the time set being the 24th day of December, 1903, at the hour of 2 p. m., in the Council Chamber of the City Hall in the said City of Tucson. That said Commissioners thereupon gave notice by mail to each owner of premises to be assessed whose name and place of residence was known to them or upon diligent inquiry could be ascertained, of the time and place of their meeting as aforesaid, and mailed notices to the defendant A. R. English, herein as aforesaid, and such notice was so mailed at least ten days before such day of hearing. Said Commissioners also caused notice to be given of such hearing by posting notices in at least four public places in said city, two of which were in the neighborhood of such improvement, to wit, one on a blackboard in front of the County Courthouse of Pima County, in Tucson; one on a blackboard in the postoffice of said city; one on a telegraph pole at the northeast corner of said improvement, to wit, at the corner of North Church and Maiden Lane Streets in said city; one on a building on the north side of
312 Maiden Lane Street between Court Street and North Church Street in said city; one on a building on the east side of Court Street between Congress Street and Maiden Lane Street, said building being situated on Block 206, in said city; and another on a telegraph pole on the north side of Congress Street between Court Street and Meyer Street in said city. They also published the same at least once in a newspaper published in the said city, to wit, in the Tucson Citizen, a daily newspaper published in said Tucson, on the following days: December 16, 17, 18, 19, 21, 22 and 23, in the year 1903. Said notices so published, posted and mailed as aforesaid were substantially in the form provided in Paragraph 473 of the Revised Statutes of Arizona, and that a true copy thereof was attached and made a part of the Complaint herein, and marked "Exhibit F."

IX.

That thereafter and at the time and place specified in said notices said Commissioners met, so as to permit all persons interested in any real estate affected by such special assessment an opportunity to appear and be heard before such Commissioners, with such
313 witnesses as they might produce. That at said meeting the defendant Allen R. English herein, appeared through his attorney or agent, and made a formal protest to his assessment, but did not produce any witnesses, nor did he specify any ground of objection. That upon said hearing it did not appear to said Commissioners that any premises of defendants assessed for said improvement in the roll prepared by them were assessed more or less than they would be benefited, or more or less than the proportionate share of the cost of the improvement which such premises should justly bear, and said Commissioners did not amend or change their said assessment so far as the defendant Allen R. English was concerned, but certified said roll as prepared by them, and within thirty days from the date of their appointment, to wit, on the 30th day of December, 1903, to the Common Council of said city, with the testimony taken by said Commissioners together with their report thereon.

X.

That upon the presentation of such roll and the report of such committee to the Common Council of said city, to wit, on the 30th day of December, 1903, said Common Council at a meeting, pro-
314 ceeded to examine and reject, confirm, or modify and confirm, the assessment roll and the assessments therein contained, and finding no injustice therein said Common Council confirmed the same. That the owner of the parcel of land herein referred to and as assessed to the defendant A. R. English herein for such improvement, by such tax, did not feel himself aggrieved by reason of the determination made by the Common Council, and did not, within twenty days after the date of such determination, appeal therefrom to the District Court, and has not since made or attempted to make any such appeal.

XI.

That in said assessment roll as so made by said Commissioners and confirmed by said Common Council were certain entries affecting said defendant, A. R. English herein named, the same being in words and figures as follows, to wit:

Owner.	Lot.	Block.	Amount.
A. R. English.....	5	197	$12,233.75

That thereafter and on, to wit, the 13th day of February, 1904, the Mayor and Common Council of said City of Tucson, passed an ordinance entitled, "Ordinance No. 181," providing for the
315 collection of said assessments, and that a true copy of said ordinance was attached to the Complaint in this action, and marked "Exhibit B."

XII.

That upon the confirmation of such report and assessment by the Common Council as aforesaid, the Recorder of the said city filed the report and assessment and recorded the action of the Council thereon, and the Mayor and Recorder thereupon issued a warrant for the collection of said special assessment and tax and delivered the same, together with a copy of the assessment roll as confirmed by the Common Council, to the officer authorized to collect the general city taxes, to wit, James Flynn, City Assessor and Tax Collector. Such warrant directed the officer aforesaid to collect said tax as provided in Chapter Two, Title II, Section 17, of the Revised Statutes of the Territory of Arizona, and gave sufficient authority to collect the assessment therein and in such copy of such assessment. That a true copy of said warrant, together with a true and correct copy of said assessment roll, was attached to and made a part of the Complaint in this action, and marked "Exhibit C."

316 XIII.

That said James Flynn, Tax Collector as aforesaid, having received such warrant, immediately gave notice thereof by publishing such notice in one or more newspapers in such city, towit, in the Tucson Citizen, a daily newspaper as aforesaid, for a period of ten days, beginning with the 15th day of February, 1904. The form of said notice was substantially in the form provided by law and a true copy of which was attached and made a part of the Complaint in this action, and marked "Exhibit D." Said Tax Collector did, as far as practicable, call upon all persons residing within the corporation of Tucson whose names are upon the said assessment roll, of the occupants of the property assessed, and personally and by written and printed notice left at his or her place of abode, informed them of such assessment and required the payment of the same, and did call upon and personally and by written and printed notice given, inform the defendant A. R. English herein mentioned, of such assessment and requested the payment of the same of him. Said Collector wrote the word "Paid" opposite to each tract or lot upon which the assessment was paid, together with the name and postoffice address
317 of the person making the payment, and the date of payment.

XIV.

That the said defendant A. R. English has not paid the said assessment so levied against him as aforesaid, nor any part or parcel thereof, but so to do has failed and refused. That the aggregate amount of assessment upon said Lot No. 5 in Block No. 197 aforesaid, is the sum of $12,533.75, all of which more fully appears from the tax bill or bills attached and filed with and made a part of the Complaint in this action, fully authenticated by certificates of the Treasurer and *Ex-officio* Tax Collector within and for said county. That all of said assessment so assessed and levied as aforesaid to the amount aforesaid, and against said above described tract of land as aforesaid, became and was and still is delinquent, and together with

the interest, penalties, fees, costs, and charges thereon, remains due and unpaid.

That said James Flynn, Collector of special assessments aforesaid, did, not later than the 21st day of December, and on, to wit, the 21st day of December, 1904, being the year in which such assessment was made, make a report in writing to the general officer of said
318 Pima County authorized by the general revenue law of said Territory to sell for taxes due the County and Territory, to wit, to said John W. Bogan, of all lands, town lots and real property upon which he was unable to collect special assessments, including the special assessment hereinabove mentioned of said A. R. English, with the amount of special assessments due and unpaid thereon, together with his warrant received by him authorizing the collection thereof. That said report so made by the said City Collector to the said John W. Bogan, as aforesaid, was accompanied by the oath of the said Collector that the list was a correct report and return of the lands, town lots and real property on which the special assessment including the said special assessment of said A. R. English levied by the authority of the City of Tucson remain due and unpaid. That he was unable to collect the same or any part thereof, and that he had given the notice required by law that said warrant had been received by him for collection.

XVI.

That upon the receipt of said delinquent list, as aforesaid, the said County Collector, John W. Bogan, did incorporate said list
319 with the County Delinquent List of said Pima County, noting in such list what property was delinquent for such special assessments, by placing the words, "City of Tucson Special Assessment," at the head of a separate column containing the said city delinquent special assessment, and did incorporate in said list the special assessment of the said A. R. English, as aforesaid.

XVII.

That thereafter the then Clerk of the Board of Supervisors as by law required, made a Back Tax Book, and complied in the making thereof with all the requirements of law; in and upon which said Back Tax Book, for the year 1904, were entered and shown as part thereof, all the lands, blocks, and lots on which taxes and City of Tucson Special Assess-ents were then delinquent in said county; whether said lands, blocks and lots had been forfeited to the Territory or not; and included the within described realty, to wit, Lot 5, in Block 197. Opposite each tract, block or lot in said book there appears therein the names of the owners, except when same were not known, and when not known the names of the person- to
320 whom the respective tracts, blocks and lots were last assessed, and which said Back Tax Book included the name of the defendant A. R. English herein as owner of said Lot 5, in Block 197. Said Back Tax Book also contained a description of said properties, the respective years for which each respective tract, block or lot was delinquent, the amount of the City of Tucson Special Assessment,

and of the original tax due each fund upon each of said respective tracts, blocks or lots, together with interest on the whole of said taxes and the special assessments due the City of Tucson at the time of the making of the said Back Tax Book; and all clerk's fees then due, and the aggregate amount of taxes and City of Tucson Special Assessments, interest and clerk's fees charged against each of said several and respective tracts, blocks and lots for the year for which the same was then delinquent, to wit, for the year 1904. That the City of Tucson Special Assessment due by the defendant A. R. English, as heretofore alleged, and as appears upon said Back Tax Book, is set out in the schedule and tax bill attached to the Complaint in this action, and all clerks's fees due, and the aggregate amount of City of Tucson Special Assessment, interest and clerk's fees charged
321 against said defendant A. R. English and against his said lot hereinbefore described, and for the assessments on which he was then delinquent.

XVIII.

That upon the completion of said Back Tax Book for the year aforesaid the same was, by the Clerk of the Board of Supervisors aforesaid, delivered to the then Tax Collector as aforesaid, for the purpose of collecting the taxes and assessments therein. That thereafter the said Collector proceeded to collect the taxes and assessments contained in said Back Tax Book, as required by law, but was after due diligence unable to collect the said assessment against said described real estate of said A. R. English.

XIX.

That there are due and unpaid upon the assessment so assessed and levied, and remaining unpaid, upon the said lot of A. R. English, hereinbefore described, on said City of Tucson Special Assessment as aforesaid, $12,533.75, all of which more fully appears from the duly certified tax bill attached to the Complaint in this action.

322 XX.

That the Territory of Arizona, and the said City of Tucson, for the assessment assessed and levied upon said Lot No. 5 as described herein, for the purpose and in the manner above mentioned, has a first and paramount lien in favor of said Territory and of said city, on said lot, to the amount of said assessment, together with lawful interest, penalties, charges and costs, for the purposes herein mentioned as aforesaid.

XXI.

That heretofore, to wit, on January 6, 1904, the aforesaid John W. Bogan, Treasurer and Tax Collector of said Pima County, made an agreement in writing with, and employed, S. L. Kingan, as an attorney, to prosecute this suit and all others for delinquent taxes in said county; that said attorney is to receive as fees therefor twenty-five per centum of the amount actually collected and paid into the treasury; that said agreement was approved by the Board of Supervisors of said county, by order of record entered on the 6th day of

January, 1904; that the said per centum is to be taxed as costs in the suit and collected as other costs.

323

XXII.

That the defendant, Allen R. English, was anxious and willing that the said improvement, to wit, the removal of said Block No. 206, should be made, and his property in said complaint described improved thereby. That by Power of Attorney, duly executed and acknowledged, the said A. R. English empowered one Rochester Ford to sign the petition for such improvement for him and as his attorney in fact, and that said Rochester Ford did so sign said petition for him as such attorney. That the said Allen R. English, by his attorney, Hereford, appeared before said Assessment Committee on said 24th of December, 1903, at their meeting held for the purpose of considering assessments, and entered a protest against the said assessment on said defendant's property, without stating any reason why the said assessment was unjust, or unlawful, but did expressly state that the said protest was made for the sole purpose of saving the question of review, and further stated that the said A. R. English did not wish to intimate that he had any objections, but wanted to save his right to it in case he should have. That the said A. R. English was ac-

324 quainted in a general way with the proceedings and was acquainted with the provisions of Ordinance No. 181, which is made a part of the complaint in this action. That the said A. R. English endeavored to raise money to pay his said assessment. That he interested himself in the sale of the bonds provided for by said Ordinance No. 181, and which had been duly issued under the terms of the said ordinance, and assisted said plaintiff in disposing of the same. That he was solicitous for the removal of said Block 206; and that he recognized and aided the city in the improvement contemplated and in the matters and things necessary to its consummation. That the said Allen R. English was present in the City of Tucson on several occasions before the removal of said Block 206, and knew in a general way what the city was doing to remove the same, and aided and assisted the city therein. That during all of said times, and up to the time of the complaint filed in this action, said A. R. English made no objection whatsoever to the assessment as levied against him, nor to the improvement as proposed, except as stated in Paragraph 22 herein.

XXIII.

That there is due and owing the plaintiff by the defendant A. R. English, and on account of such assessment and its delin-

325 quency as aforesaid, the principal sum of $12,533.75 with interest thereon at the rate of 12 per cent. per annum from December, 1904, until paid; also clerk's fees in the sum of 15 cents; also attorney's fees amounting to 25 per cent. of said principal sum, and also Tax Collector's fees, amounting to 4 per cent. of the total of the above enumerated sums, and all costs of this action.

Dated July 11th, 1907.

RICHARD E. SLOAN,
Associate Justice, Supreme Court,
Territory of Arizona.

Endorsed: No. 974. In the Supreme Court of the Territory of Arizona. Allen R. English and Honora English his wife, Appellants, *vs.* The Territory of Arizona at the relation and to the use of John W. Bogan Treasurer etc. Appellee. Findings of Fact. Filed July 17, 1907. F. A. Tritle Jr. Clerk.

326 In the Supreme Court of the Territory of Arizona.

No. 974.

ALLEN R. ENGLISH and HONORA ENGLISH, His Wife, Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

Bond on Appeal.

Know all men by these presents: That we, Allen R. English and Honora English, his wife, as principals, and Paul B. Warnekros and F. N. Wolcott as sureties are held and firmly bound unto the above named Appellee in the sum of one thousand dollars, for the payment of which well and truly to be *be* made, we do hereby bind ourselves, our and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Signed with our hands, sealed and dated this 8th day of July A. D., 1907.

The condition of the above obligation is such that, whereas, the above named Hon. Court, on the 18th day of June, 1907, duly rendered a judgment in the above entitled cause, affirming the judgment of the trial court, in favor of Appellee and against the Appellants for the sum of $12,533.75, and foreclosing the lien of Appellee
327 for the said sum, interest, costs and penalties on the property described in said judgment, from which, said appellants have prayed an appeal to the Supreme Court of the United States, which prayer the above named Honorable Court has allowed and fixed the amount of the bond on said appeal at one thousand dollars.

Now, if the above bounden Appellants shall prosecute their said appeal with effect and pay all costs and damages that may be awarded against them on said appeal, and shall in all things abide the judgment of said appellate court, then this obligation shall be void, otherwise to be and remain of full force and effect.

ALLEN R. ENGLISH.
HONORA ENGLISH.
PAUL B. WARNEKROS.
F. N. WOLCOTT.

TERRITORY OF ARIZONA, *Cochise County, ss:*

Paul B. Warnekros and F. N. Wolcott, the sureties whose names are subscribed to the foregoing bond being by me severally duly sworn each for himself, deposes that he is a resident and freeholder

within the county of Cochise, in the Territory of Arizona, and that he is worth double the sum of one thousand dollars over and above all his debts and liabilities, exclusive of property exempt from
328 execution, attachment and forced sale.

PAUL B. WARNEKROS.
F. N. WOLCOTT.

Subscribed and sworn to before me this 8th day of July A. D., 1907.

My commission expires January 17th, 1911.

[SEAL.] OSCAR K. GOLL,
Notary Public.

The within bond on appeal is approved this 12th day of July, 1907.

RICHARD E. SLOAN,
Associate Justice Supreme Court, Territory of Arizona.

(Endorsed:) No. 974. In the Supreme Court of the Territory of Arizona. Allen R. English, and Honora English, his wife, Appellants, *vs.* The Territory of Arizona, at the relation and to the use of John W. Bogan, Treasurer, etc. Appellee. Bond on Appeal. Filed July 17, 1907. F. A. Tritle, Jr. Clerk.

329 In the Supreme Court of the Territory of Arizona.

Be it remembered that heretofore and on to-wit, the 12th day of November A. D., 1906, the same being one of the regular juridical days of the January Term, A. D., 1906, of said Court, the following order, *inter alia,* was had and entered of record in said Court, which said order is in words and figures as follows, to-wit:

No. 974.

ALLEN R. ENGLISH and HONORA ENGLISH, His Wife, Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

It is ordered that the Motion to Dismiss Appeal, filed herein by Appellee, be submitted.

And afterwards and upon to-wit the 13th day of November, A. D., 1906, the same being one of the regular juridicial days of the January Term A. D., 1906, of said Court, the following order, *inter alia,* was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to wit:

330 No. 974.

A. R. ENGLISH and HONORA ENGLISH, His Wife, Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

The Motion to Dismiss the Appeal, filed herein by Appellee and heretofore submitted, not showing proof of service, it is ordered that no action be taken in the matter.

And afterwards and upon to-wit the 14th day of January A. D., 1907, the same being one of the regular juridicial days of the January Term A. D., 1907, of the said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

It is ordered that the Motion to Strike Affidavits from the files, filed herein by Appellee, be submitted.

331 And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:—

No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

On motion of Mr. S. L. Kingan, attorney for Appellee herein, it is ordered that he be granted permission to correct typographical error.

And afterwards and upon to-wit the 15th day of January , A. D. 1907, the same being one of the regular juridicial days of the January Term, A. D. 1907, of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

It is ordered that the Motion to Dismiss Appeal, filed herein
332 by Appellee and heretofore submitted, be and the same is, hereby denied by divided Court.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:—

No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

On motion of Mr. A. C. Baker for Appellants herein, it is ordered that the hearing of this cause be set for January 18th, 1907.

And afterwards and upon to-wit the 18th day of January A. D. 1907, the same being one of the regular juridical days of the January Term, A. D. 1907, of said Court, the following order, *inter alia,* was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

333 No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

On motion of Mr. A. C. Baker for Appellants herein, it is ordered that Mr. Jas. Reilly, attorney for Appellants, be permitted to argue this cause at a later date, he not being able to be present to day.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

This cause coming on this day for hearing, was argued by Mr. S. L. Kingan for Appellee, and cause ordered submitted, argument for Appellants to be heard later.

And afterwards and upon to-wit the 26th day of January
334 A. D. 1907, the same being one of the regular juridical days of the January Term, A. D. 1907, of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:—

No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

On motion of Mr. A. C. Baker for Appellants herein, it is ordered that he be granted leave to argue this cause for Appellants, today.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:—

No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

This cause coming on at this time for hearing was argued
335 by Mr. A. C. Baker for Appellants, and cause ordered submitted.
On motion of Mr. A. C. Baker, it is ordered that Appellants be granted permission to file supplemental brief.

And afterwards and upon to-wit the 22nd day of March, A. D. 1907, the same being one of the regular juridical days of the January Term, A. D. 1907, of said Court, the following order, *inter*

alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:—

No. 974.

ALLEN R. ENGLISH and HONORA ENGLISH, His Wife, Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector, Appellee.

This cause having been heretofore submitted and by the Court taken under advisement, and the Court having considered the same and being fully advised in the premises: It is ordered that the judgment of the District Court be, and the same is hereby, affirmed.

It is further ordered, adjudged and decreed that the Appellee herein do have and recover of and from Allen R. English and Honora English, Appellants herein, and Martin Costello and
336 James Reilly, sureties on Appeal and Supersedeas Bonds, the sum of twelve thousand five hundred thirty-three and 75/100 ($12,533.75) dollars, with interest thereon from the 21st day of December, 1904, until paid at the rate of 12 per cent. per annum; the sum of fifteen cents (15¢) for clerk's fees; an attorney's fee of twenty-five per cent., (25%), and four per cent. (4%) of the total of the above amounts as and for the fees of the tax collector, together with its costs in this court, taxed at —— dollars, and its costs in the court below in this cause incurred.

And afterwards and upon to-wit the 23rd day of May, A. D. 1907, the same being one of the regular juridical days of the January Term, A. D. 1907, of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:—

No. 974.

ALLEN R. ENGLISH ET UX., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

It is ordered that the Motion for Re-hearing, filed herein by Appellants, be submitted.

337 And afterwards and upon to-wit the 24th day of May, A. D., 1907, the same being one of the regular juridical days of the January Term A. D., 1907, of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

It is ordered that the Motion for Re-hearing, filed herein by Appellants and heretofore submitted, be and the same is hereby, granted.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

It is ordered that this cause be taken up on its merits
338 on the briefs filed.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

At this day comes Jas. Reilly, Esq., attorney for Appellants herein, and moves the Court for a longer time than the Court indicated, in which to file brief, which said motion was by the Court denied.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

339 At this day, upon motion of Appellants' attorney, it is ordered by the Court that the Appellants be granted 10 days in which to file brief.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

At this day, upon motion of Appellee's attorney, it is ordered by the Court that the Appellee be granted 10 days after the filing of Appellants' brief in which to file its brief.

And afterwards and upon to-wit the 18th day of June A. D., 1907, the same being one of the regular juridical days of the January Term A. D., 1907, of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

340 No. 974.

ALLEN R. ENGLISH and HONORA ENGLISH, His Wife, Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

This cause having been heretofore submitted and by the Court taken under advisement and the Court having considered the same and being fully advised in the premises:

It is ordered that the judgment of the lower court be modified by limiting the computation of the four per cent. penalty to the amount of the judgment, excluding the attorney's fee, and as so modified, that the judgment be, and the same is hereby, affirmed.

It is further ordered, adjudged and decreed that the Appellee herein do have and recover of and from Allen R. English and

Honora English, his wife, Appellants herein, and Martin Costello and James Reilly, sureties on Appeal and Supersedeas Bonds herein, the sum of twelve thousand five hundred and thirty-three dollars and seventy-five cents ($12,533.75), with interest thereon from the 21st day of December, 1904, until paid at the rate of twelve per centum per annum, the sum of fifteen cents (15¢) for Clerk's fees, an attorney's fee of twenty-five per centum of the judgment and interest thereon, and four per centum of the amount
341 collected and turned in to the County Treasury, exclusive of the attorney's fee, as and for the fees of the tax collector, together with its costs in the court below in this cause incurred.

It is further ordered, adjudged and decreed that the Appellants herein do have and recover of and from the Appellee herein, their costs in this court, taxed at three hundred fifty-seven ($357.00) dollars.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

No. 974.

ALLEN R. ENGLISH ET UX., Appellants,

vs.

THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

At this day comes James Reilly, Esq., attorney for Appellants herein, in open court and gives notice of Appeal from the judgment of this Court to the Supreme Court of the United States.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said
342 cause, which said order is in words and figures as follows, to-wit:

No. 974.

ALLEN R. ENGLISH ET UX., Appellants,

vs.

THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

Upon motion of James Reilly, Esq., for Appellants, it is ordered that the amount of the Bond on Appeal be fixed in the sum of one thousand ($1,000.) dollars.

343 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *Territory of Arizona, ss:*

I, F. A. Tritle, Jr., Clerk of the Supreme Court of the Territory of Arizona, do hereby certify that the foregoing pages numbered from 1 to 268, inclusive, contain a full, true and correct copy of that certain Abstract of Record, which was filed in this office on the twenty-second day of September, 1906, in case No. 974, Allen R. English and Honora English, his wife, Appellants, *vs.* The Territory of Arizona, at the relation and to the use of John W. Bogan, Treasurer and *Ex-Officio* Tax Collector in and for the County of Pima, Territory of Arizona, Appellee, saving and excepting that portion of the said Abstract of Record which contains the Findings of Fact and Bond on Appeal, which were omitted by direction of the Attorney for the Appellants.

And I further certify that pages numbered 269 to 342 both inclusive, contain a full true and correct copy of the Motion to Dismiss Appeal, Proof of Service of Motion to Dismiss, Opinion, Amended Petition for Re-hearing, Opinion on Re-hearing, Application for and Allowance of Appeal, Findings of Fact, Bond on Appeal, and all orders and proceedings of said Court had and entered of record in said case, as the same remain on file and of record in my office.

Also that the Citation attached hereto is the original Cita-
344 tion issued by the said Supreme Court of the Territory of Arizona.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the said Supreme Court, at Phœnix, Arizona, this 16th day of August, 1907.

[Seal Supreme Court of Arizona.]

F. A. TRITLE, JR.,
Clerk Supreme Court of Arizona.

345 In the Supreme Court of the United States.

ALLEN R. ENGLISH and HONORA ENGLISH, His Wife, Appellants,
vs.
THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

Citation.

The United States of America to the Territory of Arizona, at the relation and to the use of John W. Bogan, treasurer and *ex-officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the City of Washington, District of Columbia, on the 9th

day of September 1907, pursuant to an appeal duly allowed by the Honorable Edward Kent, Chief Justice of the Supreme Court of the Territory of Arizona, on the 18th day of June 1907, and duly filed with the Clerk of said Court, from a judgment rendered in the said Supreme Court of the Territory of Arizona on the 18th day of June, 1907 in an action on appeal to that Court, wherein you were appellee and said Allen R. English and Honora English, his wife, were appellants, to show cause, if any there be, why the said judgment rendered against the said appellants and in your favor should not be set aside, annulled and reversed and why speedy justice should not be done to the parties in whose behalf the said appeal is allowed.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12th day of July, 1907.

RICHARD E. SLOAN,
Asso. Justice of the Supreme Court
of the Territory of Arizona.

346 *United States Marshal's Return.*

Received this writ July 18, 1907, at Tucson, Arizona, and executed the same July 24, 1907, at Tucson, Arizona, by delivering a true copy hereof to John B. Wright, a member of the firm of Kingan & Wright, representing the Appellee.

B. F. DANIELS,
U. S. Marshal,
By D. M. WILLITS, *Deputy.*

347 [Endorsed:] No. 974. Marshal's Docket No. 143. In the Supreme Court of the United States. Allen R. English and Honora English, his wife, Appellants, *vs.* The Territory of Arizona, at the relation and to the use of John W. Bogan, Treasurer etc., Appellee. Citation. Filed July 26, 1907. F. A. Tritle, Clerk.

Endorsed on cover: File No. 20,857. Arizona Territory supreme court. Term No. 454. Allen R. English and Honora English, his wife, appellants, *vs.* The Territory of Arizona at the relation and to the use of John W. Bogan, treasurer and *ex officio* tax collector in and for the county of Pima, in the Territory of Arizona. Filed September 19th, 1907. File No. 20,857.

Supreme Court of the United States, October Term, 1908.

No. 180.

ALLEN R. ENGLISH and HONORA ENGLISH, His Wife, Appellants,
vs.
TERRITORY OF ARIZONA, at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex-Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

Stipulation.

It is hereby stipulated that certified copy of motion, order and findings of fact of the trial court, in the case of English *et al. vs.* Territory of Arizona *ex rel.* Bogan, Treasurer etc., No. 180, October term, 1908, may be filed in the Supreme Court of the United States, and made a part of the record of said case.

M. A. SMITH,
Attorney for Appellants.
S. L. KINGAN,
Attorney for Appellee.

[Endorsed:] 20,857. Supreme Court of the United States, October Term, 1908. No. 180. Allen R. English and Honora English, his wife, Appellants, *vs.* The Territory of Arizona, at the relation and to the use of John W. Bogan, Treasurer and *ex-Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona. Stipulation as to findings of fact. Service of the within Stipulation acknowledged this — day of March, 1909, and no objection thereto. —— ——, Attorney for Appellants.

In the Supreme Court of the Territory of Arizona.

No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
TERRITORY OF ARIZONA, at the Relation and to the Use of JOHN W. BOGAN, Treasurer, etc., Appellee.

Comes now the Appellee and moves the Court to make and enter an order requiring the Clerk of this Court to make and transmit to the Clerk of the Supreme Court of the United States, in which court said cause is now pending, the Finding of Facts in the District Court of the First Judicial District of the Territory of Arizona, in and for Pima County, which Finding of Facts was omitted from the

Transcript of Record prepared for the Supreme Court of the United States as shown by the certificate of F. A. Tritle, Jr., Clerk of this Court, dated the 16th day of August, 1907, as shown on page 144 of said Transcript.

Said Transcript page 37 shows that said Finding of Fact was omitted by direction of Appellants.

S. L. KINGAN,
Attorney for Appellee.

(Endorsed:) No. 974. In the Supreme Court of the Territory of Arizona. Allen R. English *et al. vs.* The Territory of Arizona, at the relation of and to the use of John W. Bogan, Treasurer, etc. Motion for order requiring clerk to transmit finding of facts of District Court to clerk Supreme Court of U. S. Filed Jan'y 18, 1909. F. A. Tritle, Jr., Clerk.

In the Supreme Court of the Territory of Arizona.

Be it remembered that heretofore and on to-wit the 19th day of January A. D., 1909, the same being one of the regular juridical days of the January Term, A. D., 1909, of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

No. 974.

ALLEN R. ENGLISH ET AL., Appellants,
vs.
TERRITORY OF ARIZONA, at the Relation and to the Use of JOHN W. BOGAN, Treasurer, etc., Appellee.

At this day, it is ordered by the Court that the Motion for an order requiring the Clerk of this Court to make and transmit to the Clerk of the Supreme Court of the United States, in which court said cause is now pending, the Finding of Facts in the District Court of Pima County, which was omitted from the Transcript of Record on Appeal to the Supreme Court of the United States by direction of Appellants, filed herein by Appellee and heretofore submitted, be and the same is hereby granted and the Clerk of this court is directed to make and transmit to the Clerk of the Supreme Court of the United States a copy of said Finding of Facts.

POOR COPY

In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

THE TERRITORY OF ARIZONA, at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex-Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Plaintiff,

vs.

A. R. ENGLISH and HONORA ENGLISH, His Wife, Defendants.

Findings of Fact and Conclusions of Law.

This cause coming on for trial on the 14th day of December, 1905, before the Court sitting without a jury, a jury having been waived by all parties hereto; and the plaintiff appearing by its attorney S. L. Kingan, with William Lovell and John B. Wright of counsel, and the defendant appearing by William P. Miller, his counsel; and plaintiff having waived its motion to strike out parts of defendant's answer; and certain oral and documentary evidence having been introduced by the respective parties, and the cause argued; and the Court upon request, and by consent of all parties, having given time to file written briefs,

Now on this the 3rd day of February, 1906, the said cause being fully submitted, and the Court being thoroughly advised in the premises, does make the following

Findings of Fact.

I.

That the said Territory is now and during all of the times mentioned in the complaint herein has been a public corporation, duly created and existing by virtue of law; that the said County of Pima is now and during all of the times mentioned in the complaint herein has been a public corporation, duly created and existing by virtue of law, and is one of the political subdivisions of the said Territory; that the City of Tucson, hereinafter mentioned, is now and during all of the times mentioned in the complaint herein has been a public corporation, duly created and existing by virtue of law, and situated within the said County of Pima; and that John W. Bogan aforesaid is now and during all of the times mentioned in the complaint herein has been the duly elected, commissioned, qualified, and acting Treasurer and *ex-Officio* Tax Collector in and for the County and Territory aforesaid, and is now and during all of the times mentioned in the complaint has been engaged in the discharge of his duties as such, under and by virtue of the laws of said Territory.

II.

That the defendant, A. R. English, is the owner of the following described town lot, situated in the City of Tucson, and in the

said County of Pima and Territory of Arizona, to-wit: Lot No. Five (5) in Block No. One Hundred and Ninety-Seven (197) according to the official survey of said City, and that said lot is contiguous to the improvement contemplated by Ordinance No. 168, hereinafter referred to. That the defendant Honora English was at the time of the commencement of this action, the wife of defendant, A. R. English.

III.

That the above described city lot was, for the purpose and at the time, and to the amounts hereinafter set forth, subject to special assessment under the laws of the Territory of Arizona, and the said City of Tucson.

IV.

That heretofore, to-wit, on the 19th day of June, A. D., 1903 the Mayor and Common Council of Tucson passed an ordinance entitled "Ordinance No. 168, Providing for Altering and Widening Congress Street between Church Street and Court Street, in the City of Tucson, Arizona," a true copy of which ordinance is attached to and made a part of the complaint in this action, and marked "Exhibit A."

V.

That before said ordinance was passed a petition for the making of the improvement described in said Ordinance, signed by the owners of a majority of the lineal frontage upon the improvement in said ordinance provided, was filed with the City Recorder of said City of Tucson, as set forth in said ordinance. That the improvement contemplated by said Ordinance was the condemnation and removal of Block No. 206, in said City of Tucson.

VI.

That thereafter suit was commenced in the said above-named court, by the said City of Tucson as plaintiff, and Lizzie J. Woods and others as defendants, said defendants being the owners of said Block No. 206, which suit is numbered 3409; that in said action said court entered an order of condemnation of said Block No. 206, and the damages for the taking of said property, as contemplated in said Ordinance, was adjudged to be the sum of Forty-six Thousand Five Hundred ($46,500) Dollars; that said damages were ascertained by the Court by evidence, produced at the trial thereof.

VII.

That thereafter and in said proceeding the plaintiff therein, to-wit, the City of Tucson, filed a supplemental petition praying said court to cause an assessment to be made for the purpose of raising the amount necessary to pay the compensation and damages which had been awarded to the property taken or damaged as aforesaid, with the cost of the proceeding. That thereafter, and on the 5th day of December, 1903, and in accordance with the prayer of

said supplemental petition, said court appointed three Commissioners, residents of said City, to make such assessment and to ascertain, as near as may be, the costs incurred to the time of such appointment, and the probable further cost of the proceeding, including therein the estimated cost of making and collecting such assessment, and directing such costs to be included by such Commissioners in making such assessment. That one of the said Commissioners was the City Assessor of the said City of Tucson. That said Commissioners examined the locality where the said improvement was proposed to be made, and the lots, blocks, tracts and parcels of land that shall be benefited thereby, and estimated what proportion of the total cost of such improvement would be of benefit to the public and what proportion thereof would be of benefit to the property to be benefited, and apportion the same between the City and such property so that each had its relative equitable proportion; and having found such amounts said Commissioners apportioned and assessed such amounts so found to be of benefit to the property, upon the several lots, blocks tracts and parcels of land, in the proportion in which they were severally benefited by such improvement; but that no lot, block, or tract of land was assessed by said Commissioners in a greater amount than it was actually benefited. Said Commissioners also made an assessment roll in which appeared the names of the owners, so far as known, and a description of each block, lot, tract, or parcel of land, and the amounts assessed as benefits thereto, and in which said roll they set down as against the said City the amount they found as public benefit and certified said assessment roll to the Common Council of such City within at least thirty days from the date of their appointment, to-wit, the date hereinafter mentioned.

VIII.

That within five days after their appointment, to-wit, on the 8th day of December, 1903, said Commissioners met and fixed a time and place when and where they would meet to consider and decide upon such assessments, which time was not less than fifteen nor more than twenty days from the date of their appointment, to-wit, the time set being the 24th day of December, 1903, at the hour of 2 p. m. in the Council Chamber of the City Hall in the said City of Tucson. That said Commissioners thereupon gave notice by mail to each owner of premises to be assessed whose name and place of residence was known to them or upon diligent inquiry could be ascertained, of the time and place of their meeting as aforesaid, and mailed notices to the defendant A. R. English, herein as aforesaid, and such notice was so mailed at least ten days before such day of hearing. Said Commissioners also caused notice to be given of such hearing by posting notices in at least four public places in said City, two of which were in the neighborhood of such improvement, to-wit, one on a blackboard in front of the county courthouse of Pima County, in Tucson, one on a blackboard in the post-office of said City; one on a telegraph pole at the northeast corner of said improvement, to-wit, at the corner of North Church and Maiden Lane

Streets in said City; one on a building on the north side of Maiden Lane Street between Court Street and North Church Street in said city; one on a building on the east side of Court Street between Congress Street and Maiden Lane Street, said building being situated on Block 206, in said City; and another on a telegraph pole on the north side of Congress Street between Court Street and Meyer Street in said City. They also published the same at least once in a newspaper published in the said city, to-wit, in the Tucson Citizen, a daily newspaper published in said Tucson, on the following days: December 16, 17, 18, 19, 21, 22, and 23, in the year 1903. Said notices so published, posted and mailed as aforesaid were substantially in the form provided in Paragraph 473 of the Revised Statutes of Arizona, and that a true copy thereof was attached and made a part of the Complaint herein, and marked "Exhibit F."

IX.

That thereafter and at the time and place specified in said notices said Commissioners met, so as to permit all persons interested in any real estate affected by such special assessment an opportunity to appear and be heard before such Commissioners, with such witnesses as they might produce. That at said meeting the defendant Allen R. English herein, appeared through his attorney or agent, and made a formal protest to his assessment, but did not produce any witnesses, nor did he specify any ground of objection. That upon said hearing it did not appear to said Commissioners that any premises of defendants assessed for said improvement in the roll prepared by them were assessed more or less than they would be benefited, or more or less than the proportionate share of the cost of the improvement which such premises should justly bear, and said Commissioners did not amend or change their said assessment so far as the defendant Allen R. English was concerned, but certified said roll as prepared by them, and within thirty days from the date of their appointment, to-wit, on the 30th day of December, 1903, to the Common Council of said City, with the testimony taken by said Commissioners, together with their report thereon.

X.

That upon the presentation of such roll and the report of such Committee to the Common Council of said City, to-wit, on the 30th day of December, 1903, said Common Council at a meeting, proceeded to examine and reject, confirm, or modify and confirm, the assessment roll and the assessments therein contained, and finding no injustice therein said Common Council confirmed the same. That the owner of the parcel of land herein referred to and as assessed to the defendant A. R. English herein for such improvement, by such tax, did not feel himself aggrieved by reason of the determination made by the Common Council, and did not, within twenty days after the date of such determination, appeal therefrom to the District Court, and has not since made or attempted to make any such appeal.

XI.

That in said assessment roll as so made by said Commissioners and confirmed by said Common Council were certain entries affecting said defendant, A. R. English herein named, the same being in words and figures as follows, to-wit:

Owner.	Lot.	Block.	Amount.
A. R. English.....	5	197	$12,533.75

That thereafter and on to-wit, the 13th day of February, 1904, the Mayor and Common Council of said City of Tucson, passed an ordinance entitled, "Ordinance No. 181" providing for the collection of said Assessments, and that a true copy of said ordinance was attached to the Complaint in this action, and marked "Exhibit B."

XII.

That upon the confirmation of such report and assessment by the Common Council as aforesaid the Recorder of the said City filed the report and assessment and recorded the action of the Council thereon, and the Mayor and Recorder thereupon issued a warrant for the collection of said special assessment and tax and delivered the same, together with a copy of the assessment roll as confirmed by the Common Council, to the officer authorized to collect the general city taxes, to-wit, James Flynn, City Assessor and Tax Collector. Such warrant directed the officer aforesaid to collect said tax as provided in Chapter Two, Title II, Section 17, of the Revised Statutes of the Territory of Arizona, and gave sufficient authority to collect the assessment therein and in such copy of such assessment roll. That a true copy of said warrant, together with a true and correct copy of said assessment roll, was attached to and made a part of the Complaint in this action, and marked Exhibit "C."

XIII.

That said James Flynn, Tax Collector as aforesaid, having received such warrant, immediately gave notice thereof by publishing such notice in one or more newspapers in such city, to-wit, in the Tucson Citizen, a daily newspaper as aforesaid, for a period of ten days, beginning with the 15th day of February, 1904. The form of said notice was substantially in the form provided by law and a true copy of which was attached and made a part of the Complaint in this action, and marked Exhibit "D." Said Tax Collector did, as far as practicable, call upon all persons residing within the corporation of Tucson, whose names are upon the said assessment roll, of the occupants of the property assessed, and personally and by written and printed notice left at his or her place of abode, informed them of such assessment and required the payment of the same, and did call upon and personally and by written and printed notice given, inform the defendant A. R. English herein mentioned, of such assessment and requested the payment of the same of him. Said Collector wrote the word "Paid" opposite to each tract or lot

upon which the assessment was paid, together with the name and post-office address of the person making the payment, and the date of payment.

XIV.

That the said defendant A. R. English has not paid the said assessment so levied against him as aforesaid, nor any part or parcel thereof, but so to do has failed and refused. That the aggregate amount of assessment upon said Lot No. 5 in Block No. 197 aforesaid, is the sum of $12,533.75, all of which more fully appears from the tax bill or bills attached and filed with and made a part of the Complaint in this action, fully authenticated by certificate of the Treasurer and *ex-Officio* Tax Collector within and for said County. That all of said assessment so assessed and levied as aforesaid for the purposes aforesaid, to the amount aforesaid, and against said above described tract of land as aforesaid, became and was and still is delinquent, and together with the interest, penalties, fees, costs and charges thereon, remains due and unpaid.

XV.

That said James Flynn, Collector of special assessments aforesaid, did, not later than the 21st day of December, and on to-wit, the 21st day of December, 1904, being the year in which such assessment was made, make a report in writing to the general officer of said Pima County authorized by the general revenue law of said Territory to sell for taxes due the County and Territory, to-wit, to said John W. Bogan, of all lands, town lots and real property upon which he was unable to collect special assessments, including the special assessment hereinabove mentioned of said A. R. English, with the amount of special assessments due and unpaid thereon, together with his warrant received by him authorizing the collection thereof. That said report so made by the said City Collector to the said John W. Bogan, as aforesaid, was accompanied by the oath of the said Collector that the list was a correct report and return of the lands, town lots and real property on which the special assessments, including the said special assessment of said A. R. English levied by the authority of the City of Tucson remain due and unpaid. That he was unable to collect the same or any part thereof, and that he had given the notice required by law that said warrant had been received by him for collection.

XVI.

That upon the receipt of said delinquent list, as aforesaid, the said County Collector, John W. Bogan, did incorporate said list with the County Delinquent List of said Pima County, noting in such list what property was delinquent for such special assessments, by placing the words "City of Tucson Special Assessment" at the head of a separate column containing the said city delinquent special assessment, and did incorporate in said list the said special assessment of the said A. R. English, as aforesaid.

XVII.

That thereafter the then Clerk of the Board of Supervisors as by law required, within the time required, made a Back Tax Book, and complied in the making thereof with all the requirements of law; in and upon which said Back Tax Book, for the year 1904, were entered and shown as part thereof, all the lands, blocks, and lots on which taxes and City of Tucson Special Assessments were then delinquent in said county; whether said lands, blocks and lots had been forfeited to the Territory or not; and included the within described realty, to-wit, Lot 5, in Block 197. Opposite each tract, block or lot in said book there appears therein the names of the owners, except when same were not known, and when not known the names of the person- to whom the respective tracts, blocks and lots were last assessed, and which said Back Tax Book included the name of the defendant A. R. English herein as owner of said Lot 5, in Block 197. Said Back Tax Book also contained a description of said properties, the respective years for which each respective tract, block or lot was delinquent, the amount of the City of Tucson Special Assessment, and of the original tax due each fund upon each of said respective tracts, blocks or lots, together with interest on the whole of said taxes and the special assessments due the City of Tucson at the time of the making of the said Back Tax B ok; and all clerk's fees then due, and the aggregate amount of taxes and City of Tucson Special Assessments, interest and clerk's fees charged against each of said several and respective tracts, blocks and lots for the year for which the same was then delinquent, to-wit, for the year 1904. That the City of Tucson Special Assessment due by the defendant A. R. English, as heretofore alleged, and as appears upon said Back Tax Book, is set out in the schedule and tax bill attached to the Complaint in this action, and all clerk's fees due, and the aggregate amount of City of Tucson Special Assessment, interest and clerk's fees charged against said defendant A. R. English, and against his said lot hereinbefore described, and for the assessments on which he was then delinquent.

XVIII.

That upon the completion of said Back Tax Book for the year aforesaid the same was, by the Clerk of the Board of Supervisors aforesaid, delivered to the then Tax Collector as aforesaid, for the purpose of collecting the taxes and assessments therein. That thereafter the said Collector proceeded to collect the taxes and assessments contained in said Back Tax Book, as required by law, but was after due diligence unable to collect the said assessment against said described real estate of said A. R. English.

XIX.

That there are due and unpaid upon the assessment so assessed and levied, and remaining unpaid, upon the said Lot of A. R. English, hereinabove described, on said City of Tucson Special Assessment as aforesaid, $12,533.75, all of which more fully appears from the duly certified tax bill attached to the Complaint in this action.

XX.

That the Territory of Arizona, and the said City of Tucson, for the assessment assessed and levied upon said Lot No. 5, as described herein, for the purpose and in the manner above mentioned, has a first and paramount lien in favor of said Territory and of said City, on said lot, to the amount of said assessment, together with lawful interest, penalties, charges and costs, for the purposes herein mentioned as aforesaid.

XXI.

That heretofore, to-wit, on January 6, 1904, the aforesaid John W. Bogan, Treasurer and Tax Collector of said Pima County, made an agreement in writing with, and employed, S. L. Kingan, as an attorney, to prosecute this suit and all others for delinquent taxes in said county; that said attorney is to receive as fees therefor twenty five per centum of the amount actually collected and paid into the treasury; that said agreement was approved by the Board of Supervisors of said county, by order of record entered on the 6th day of January, 1904; that the said per centum is to be taxed as costs in the suit and collected as other costs.

XXII.

That the defendant, Allen R. English, was anxious and willing that the said improvement, to-wit, the removal of said Block No. 206, should be made, and his property in said complaint described improved thereby. That by Power of Attorney, duly executed and acknowledged, the said A. R. English empowered one Rochester Ford, to sign the petition for such improvement for him and as his attorney in fact, and that said Rochester Ford did so sign said petition for him as such attorney. That the said Allen R. English, by his Attorney Hereford, appeared before said Assessment Committee on said 24th of December, 1903, at their meeting held for the purpose of considering assessments, and entered a protest against the said assessment on said defendant's property, without stating any reason why the said assessment was unjust, or unlawful, but did expressly state that the said protest was made for the sole purpose of saving the question of review, and further stated that the said A. R. English did not wish to intimate that he had any objections, but wanted to save his right to it in case he should have. That the said A. R. English was acquainted in a general way with the proceedings and with the provisions of Ordinance No. 181, which is made a part of the complaint in this action. That the said A. R. English endeavored to raise money to pay his said assessment. That he interested himself in the sale of the bonds provided for by said Ordinance No. 181, and which had been duly issued under the terms of the said Ordinance, and assisted said plaintiff in disposing of the same. That he was solicitous for the removal of said Block 206; and that he recognized and aided the City in the improvement contemplated and in the matters and things necessary to its consummation. That the said Allen R. English was present in the City of Tucson on sev-

eral occasions before the removal of said Block 206, and knew in a general way what the City was doing to remove the same, and aided and assisted the City therein. That during all of said times, and up to the time of the complaint filed in this action, said A. R. English made no objection whatsoever to the assessment as levied against him, nor to the improvement as proposed, except as stated in Paragraph 22 herein.

XXIII.

That there is due and owing the plaintiff by the defendant A. R. English, and on account of such assessment and its delinquency as aforesaid, the principal sum of $12,533.75, with interest thereon at the rate of 12 per cent. per annum from December, 1904, until paid; also, clerk's fees in the sum of 15 cents; also, attorney's fees amounting to 25 per cent. of said principal sum, and also, tax collector's fees, amounting to 4 per cent. of the total of the above enumerated sums, and all costs of this action.

And from the foregoing Facts, the Court makes the following

Conclusions of Law.

* * * * * * *

UNITED STATES OF AMERICA,
Territory of Arizona, ss:

I, F. A. Tritle, Jr., Clerk of the Supreme Court of the Territory of Arizona, do hereby certify that the foregoing typewritten pages comprise a true, perfect and complete copy of that certain Motion and Order of Court made on the 19th day of January A. D., 1909, in case No. 974, Allen R. English and Honora English, his wife, *vs.* The Territory of Arizona, at the relation and to the use of John W. Bogan, Treasurer and *ex-Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, and also of the Findings of Fact made by the District Court of the First Judicial District of the Territory of Arizona, in and for the County of Pima, in said case, as the same are contained in the Judgment Roll in said case on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 19th day of February A. D., 1909, at Phœnix, Arizona.

[Seal Supreme Court of Arizona.]

F. A. TRITLE, JR.,
Clerk Supreme Court of Arizona.

[Endorsed:] 180, 20,857. 180, 20,857.

[Endorsed:] File No. 20,857. Supreme Court U. S. October Term, 1908. Term No. 180. Allen R. English *et ux.*, App'ts, *vs.* The Territory of Arizona *ex rel.* & to use of John W. Bogan, Treasurer, &c. Stipulation of counsel and addition to record. Filed Mar. 22d, 1909.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 180.

ALLEN R. ENGLISH and HONORA ENGLISH, His Wife, Appellants,

vs.

THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex-Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

Stipulation.

It appearing that paragraphs 10 and 11 of plaintiff's (Appellee's) complaint in the above entitled cause, having by inadvertence been omitted from the record by the Clerk of the Supreme Court of Arizona,

It is hereby stipulated that the Clerk of the Supreme Court of Arizona shall now certify and send up to the Supreme Court of the United States, paragraphs 10 and 11 of the plaintiff's complaint in the above entitled cause, and that the same may be filed in the office of the Clerk of the Supreme Court of the United States, as a part of the record in the above entitled cause, and that the same shall be taken and held to be a part of the record of said cause with like force and effect as if the said omitted paragraphs had been sent up originally by the Clerk of the Supreme Court of Arizona, with the record in said cause; and that the said omitted portions of said complaint to-wit, paragraphs 10 and 11, may be printed and attached or pasted in the printed record or transcript of record, in said cause and shall be held to be part thereof.

MARCUS A. SMITH,
Attorney for Appellants.
S. L. KINGAN,
Attorney for Appellee.

[Endorsed:] Supreme Court of the United States, October Term, 1908. No. 180. Allen R. English and Honora English, His Wife, Appellants, *vs.* The Territory of Arizona, at the relation and to the use of John W. Bogan, Treasurer and *ex-Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee. Stipulation.

In the Supreme Court of the Territory of Arizona.

No. 974.

THE TERRITORY OF ARIZONA at the Relation and to the Use of JOHN W. BOGAN, Treasurer and *ex-Officio* Tax Collector in and for the County of Pima, in the Territory of Arizona, Plaintiff and Appellee,

vs.

A. R. ENGLISH and HONORA ENGLISH, His Wife, Defendants and Appellants.

X.

That upon the presentation of such roll and the report of such Committee to the Common Council of said city, to wit, on the 30th day of December, 1903, said Common Council proceeded to examine and reject, confirm, or modify and confirm, the assessment roll and the assessments therein contained, and finding no injustice therein said Common Council confirmed the same, and thereupon the same became and stands as a valid tax, and became and is a lien upon the several lots, blocks and pieces of land assessed therein, as other and general city taxes, are, to the amount of such assessment against each lot, block, or piece of land. That the owners of the parcels of land herein referred to and as assessed to the defendants herein for such improvement, by such tax, did not feel themselves aggrieved by reason of the determination made by the Common Council, and did not, within twenty days after the date of such determination, appeal therefrom to the District Court, and have not since made or attempted to make any such appeal.

XI.

That in said assessment roll as so confirmed by said Commissioners and said Common Council were certain entries affecting said defendants herein named, the same being in words and figures as follows, to wit:

Owner.	Lot.	Block.	Amount.
A. R. English	5	197	$12,533.75

That thereafter and on to wit, the 13th day of February, 1904, the Mayor and Common Council of said City of Tucson passed an ordinance entitled "Ordinance No. 181," a copy of which ordinance is hereto attached and marked "Exhibit B."

UNITED STATES OF AMERICA,
Territory of Arizona, ss:

I, F. A. Tritle, Jr., Clerk of the Supreme Court of the Territory of Arizona, do hereby certify, the above and foregoing to be true

and correct copies of paragraphs numbered X and XI of the Original Complaint, attached to the Judg- Roll, in that certain case lately pending in said Court and now on appeal to the Supreme Court of the United States, wherein Allen R. English *et ux.* are Appellants and The Territory of Arizona is Appellee, as the same remains on file and of record in my office.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court, at my office in Phœnix, Arizona, this twenty-fifth day of March, A. D. 1909.

[Seal Supreme Court of Arizona.]

F. A. TRITLE, JR., *Clerk.*

[Endorsed:] File No. 20857. Supreme Court U. S., October Term, 1908. Term No. 180. Allen R. English *et ux.*, appts., *vs.* The Ty. of Arizona at the relation & to use of John W. Bogan, Treas'r, &c. Stipulation to add Certified copy of Paragraphs X & XI of Original Complaint to transcript of record. Filed April 23, 1909.

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Brief for Appellant

JAMES REILLY
C. BAKER
Attorneys for Appellant

HON. MARCUS A. SMITH,
Of Counsel

Supreme Court

OF THE

United States

October Term, 1907

ALLEN R. ENGLISH and HONORA, His Wife, Appellants,

vs.

THE TERRITORY OF ARIZONA, at the relation and to the use of JOHN W. BOGAN, Treasurer and Ex-Officio Tax Collector in and for the County of Pima, in the Territory of Arizona, Appellee.

No. 454.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

Brief for Appellant.

STATEMENT OF THE CASE.

On and prior to June 19th, 1903, a petition for the condemnation of all private property in Block No. 206 of the City of Tucson, in the County of Pima, Territory of Arizona, a small wedge block

bounded on the South by Congress Street, on the North by a street called Maiden Lane, on the East by Church Street, and on the West by Court Street, for the purpose of widening Congress Street to and including Maiden Lane, was pending before the Mayor and Common Council of the said City of Tucson; and on that day the appellant, Allen R. English, by his attorney-in-fact, R. Ford, signed said petition, with two others, and thereby the said petition became the petition of a majority of the owners of the lineal frontage on said Block No. 206 (Printed Record page 109), and thereupon the Common Council passed City Ordinance No. 168 for the condemnation of said block for the purpose of widening Congress Street to and including Maiden Lane, (Printed Record page 67).

And thereupon the City brought an action in the District Court of said Pima County, No. 3409, against the owners, occupants and lessees of said Block No. 206, Lizzie J. Woods et al., and procured a judgment of said Court, condemning all private property rights in said block, for an easement to widen Congress Street, as in the said ordinance No. 168 set out, and assessing the damages at $45,000.00; and afterwards, on a supplemental petition, appointed three commissioners, John W. Bogan, James Flynn and H. H. Pilling, to assess the property benefited by said improvement, and providing: "That no lot, block, tract or parcel of land shall be assessed at a greater amount than it shall be actually benefited (Record pages 75 to 85).

And the commissioners met on December 8th, 1903, three days after the order of appointment, and adjourned to December 14th, and ordered notice given to all persons that a hearing would be had

before said commission on the 24th day of December, 1903, at the City Hall, etc.

The commission met again on December 15th, 1903, at which it was agreed: "That the North side of Maiden Lane, between Court and Church Streets, should be fifty per cent of the entire assessment, and the South side of Congress Street, between Church and Court Streets, should be twenty-five per cent of the entire assessment, and that the adjacent property benefited, including the City of Tucson, should be the balance, and the Clerk of the committee was instructed, by and with the advice of the committee, to prepare an assessment roll, showing the benefit to the property as aforesaid," (Record printed page 87).

And on the 24th day of December, 1903, the committee met and proceeded as follows:

"Committee, J. W. Bogan, H. H. Pilling and James ————. The meeting was called to order at 2:15 p. m. by Chairman Bogan.

Chairman: The first name on the assessment list is A. R. English, Lot 5, Block 197, $12,533.75. Mr. Hereford, representing Mr. English, stated that there were several matters on which he would like to have an understanding.

First, he wanted to know if the assessment was based on the theory that the property lying south of that of Mr. English, between the English property and Congress Street, would go to Mr. English, to which the chairman answered, 'Yes.'

Chairman: The next on the roll is C. F. Shumacher, Lot 4, Block 197, $4,999.50. Mr. Shumacher asked on what basis the committee made the assessment and was answered by Mr. Houghton,

Clerk, that it was made on the basis of $75.00 per foot front." (Printed Record page 87 at bottom).

And the committee proceeded to call the roll and make the assessment list as set out in full on pages 88 to 95, both inclusive, of the record.

The committee met again on December 28th, 1903, and made report with copy of the corrected assessment to the Mayor and Common Council of Tucson (Record pages 96-97-98 and 99).

And the Common Council met on December 30th, 1903, and passed resolution No. 100, confirming the said report and assessment roll, (Record page 103).

And thereafter on the 13th of February, 1904, the Common Council passed Ordinance No. 181, Plaintiff's Exhibit B, entitled: "Providing for the collection of assessments to remove Block 206 of the City of Tucson and for the issuance of bonds therefor", which, after reciting the proceedings had in the matter of the removal of said block as hereinbefore set out, provided for the issue of bonds of the City to pay for any assessments not immediately collected as per Par ——, Sec. —— ,of Chapter 2, Title II, Revised Statutes, and fixing the interest of said bonds at 7 per cent per annum, and making the payments due on February 15th, 1904, (Record pages 9-10-11-12 and 13).

And on February 15th, 1904, the Mayor of the said City of Tucson issued to James Flynn, Tax Collector, his warrant (Plaintiff's Exhibit C) in the words and figures following, to-wit:

"Warrant for the Collection of Special Assessment and Taxes.

To James Flynn, Esq., Collector of Taxes in and for the City of Tucson, Pima County, Arizona, Greeting:

You are hereby authorized and directed according to law and the ordinances of the City of Tucson, particularly Ordinance No. 168, entitled, 'Providing for widening Congress Street between Church Street and Court Street, in the City of Tucson, Arizona, by the removal of Block No. 206', which said ordinance was passed and adopted and duly approved on the 19th day of June, 1903, to collect within thirty days from the date of receipt of this warrant by you, in manner and form as hereinafter specified, all and singular the special assessment and taxes levied against all and singular those parcels of land, with the improvements thereon, to be benefited by the widening of Congress Street, as contemplated by said ordinance, all of which said properties are respectively set forth, designated and described, together with the names of the owners thereof,in the amended and modified assessment roll of the Special Assessment Committee appointed by the District Court of the First Judicial District, Territory of Arizona, in and for Pima County, filed December 5, 1903, and adopted by the Mayor and Common Council of the City of Tucson, December 30, 1903, a copy of which said amended assessment roll, as confirmed by the Common Council, is herewith delivered.

You will therefore proceed forthwith, according to law and the said ordinance, to make collection of the said special assessments and taxes, and as hereinafter particularly described, and all moneys so collected by you, you will at once pay over to the Treasurer of the City of Tucson, taking the receipt of the said Treasurer therefor. You will

make all and singular of the said collections as hereinafter specified, so far as possible, within thirty days from the date of receipt by you of this warrant, and in case you shall fail to collect any of the said special assessments so assessed and levied, you will report the same to the Mayor and Common Council of the City of Tucson at the expiration of thirty days of the receipt by you of this warrant.

You will further take notice that the said special assessments are to become due and payable in five equal annual installments, the first installment to be due and payable within thirty days from the date of this warrant as aforesaid, the balance of the installments to become due and payable in five equal annual installments each year thereafter, and as provided in Ordinance No. 181 of the said City of Tucson, passed and adopted on the 13th day of February, 1904. Deferred installments are to bear seven (7) per cent interest which you will also collect at the times and dates as they become due.

You are further notified that within thirty days from the date of these presents any party assessed may pay the entire amount of his assessment, and thus be relieved from paying the annual installments and interest thereon. From and after the thirty days from the date of this warrant you will not extend the privilege of paying the entire assessment to any one, but their said assessments must be paid in installments as herein provided.

Hereof fail not.

Done in the City of Tucson this 15th day of February, 1904.

C. F. SCHUMACHER, Mayor.

Attest: FRANK S. TREAT,
Recorder and Ex-Officio City Clerk."

with a copy of the modified and corrected assessment, hereinbefore mentioned, attached (Record pages 13-14-15 and 16), and on the same day the said Tax Collector published notice, Plaintiff's Exhibit D, as follows:

"SPECIAL ASSESSMENT NOTICE.

"Notice is hereby given that the Common Council of the City of Tucson, in Pima County, Territory of Arizona, have levied and assessed a special assessment on the property benefited by the following improvements, namely: The altering and widening of Congress Street between Church Street and Court Street, in said City of Tucson, by the removal of Block 206, as will more fully appear from the assessment roll for such special assessment on file in the office of the City Recorder of said City; and a warrant for the collection of such assessment is now in the hands of the undersigned. All persons interested are hereby notified to call and pay the amounts assessed, at the Collector's office in the City Hall, at the corner of Court and Library Streets, in the City of Tucson, within thirty days from date hereof. The amounts assessed against parties interested are due in five annual installments of equal amounts each, deferred installments to bear interest at the rate of seven (7) per cent per annum. All parties interested are at liberty, within the thirty days herein specified, to pay the total amount of the assessments against them and thus avoid interest on deferred installments. This privilege is not to be granted from and after the said thirty days. The failure to pay any installment of said assessment when due shall make the entire assessment payable.

Dated this 15th day of February, 1904.

JAMES FLYNN, Collector."

And thereafter, on the 9th day of April, 1904, the said Tax Collector brought suit in the District Court of Pima County, No. 3521, in the name of the City of Tucson, at his relation, against Allen R. English and wife, and several others for the collection of the same assessment for the removal of Block 206, in which Allen R. English and wife were charged with the same assessment, $12,533.75. (See answer of English and wife, Record page 18, paragraph II, and certificate of Clerk, Record page 124).

And after that suit commenced on July 5th, 1904, the Mayor and Common Council of the City of Tucson passed Resolution No. 108, in the words and figures following, to-wit:

"RESOLUTION NO. 108.

Be it resolved by the Mayor and Common Council of the City of Tucson, as follows:

Whereas, Heretofore and on to-wit, the 19th day of June, 1903, the Mayor and Common Council of the City of Tucson, by their Ordinance No. 168, provided for altering and widening Congress Street between Church Street and Court Street in said city, by special assessment of adjacent property benefited; and

Whereas, said Ordinance contemplated the entire removal of Block No. 206 in said city, and when removed it was the expressed purpose and intention that the part of Maiden Lane lying between Church Street and Court Street should be vacated and should become a part of the property abutting thereon the north; and,

Whereas, acting on such expressed agreement the committee appointed to estimate the benefits to

adjacent property assessed about one-half of the entire cost of the removal of said block 206 to the properties directly fronting on the north side of Maiden Lane between Church Street and Court Street, to-wit, upon Lots 3, 4 and 5 in Block No. 197; and,

Whereas, The said Block No. 206 has now been removed and a new map of said Block No. 197, in the City of Tucson, has been prepared by the City Engineer and adopted by the Mayor and Common Council on the 5th day of July, 1904, which said map shows the portion of Maiden Lane to be vacated as a street, and also the property to be added to the lots abutting on Maiden Lane on the north by reason of the vacation of that portion of Maiden Lane sufficient to make Congress Street of a uniform width of eighty feet throughout its entire length; therefore,

Be it Resolved, That that portion of Maiden Lane shown upon the said map, so approved and adopted as aforesaid, be and the same is hereby vacated, and the same shall become a part of the lots abutting on Maiden Lane to the north, to-wit: Lots Nos. 3, 4 and 5 in Block No. 197, and in the proportion which it should justly bear to such lots, and as shown specifically by metes and bounds on said map; provided, however, and this resolution is upon the expressed understanding, that the assessments levied upon the said lots 3, 4 and 5 are paid, and said vacated portion of said Maiden Lane is not to become a part of any of said lot or lots, or to be added thereto, until the assessment upon such lot or lots is paid in full, and when so paid this resolution as to the lot or lots upon which the assessment is paid is to be in immediate force and effect.

Be it further resolved, That the City Clerk and Recorder of the City of Tucson is hereby required

to record a certified copy of this resolution, together with a certified copy of said map of Block No. 197, with the City Recorder of Pima County, Territory of Arizona.

Passed and adopted by the Mayor and Common Council this 5th day of July, 1904.

FRANK S. TREAT, City Clerk.

Approved this 5th day of July, 1904.

C. F. SCHUMACHER, Mayor."

And about a year thereafter (the exact date not appearing from the record, but a short time before April 25th, 1905) this action was commenced in the same Court, to collect the same assessment in the name of the Territory of Arizona, at the relation and to the use of John W. Bogan, Treasurer and Ex-Officio Tax Collector of the County of Pima.

The complaint in this action, with its Exhibits A, B, C and D, from which we have hereinbefore copied, appears on pages 1 to 16 inclusive of the Record; and in the first fourteen paragraphs, pages 1 to 5, states a cause of action in favor of the City of Tucson and against English and wife, and in the next nine paragraphs, XV to XXIII, pages 5 to 8, states the cause why this action is brought by the said relator John W. Bogan.

The appellants, Allen R. English and wife, defendants in the suit answered said complaint. This answer is contained on pages 18 to 26, both inclusive, of the record; and pleads the action then pending of the City of Tucson at the relation of James Flynn, Tax Collector against the said English and wife, for the same special assessments. (Record page 18.)

And again sets up a plea of another action pending. (Record page 19.)

And defendants made further answer in seventeen paragraphs on pages 19 to 26 both inclusive of the record, making many admissions, denials and averments, among which they denied:

"That the Territory of Arizona had any lien whatever against the property of these defendants, or any of the same, for or on account of the assessment referred to in the complaint herein or otherwise. (Record Par. XIV, page 24.)

And alleged upon information and belief:

"That the improvements referred to in the complaint and involved in this action, were made without the appointment by the City Council of three of its members or other persons to make an examination of the premises to be affected, and to make an estimate of the cost of the improvement contemplated by said ordinance No. 168"; and allege: "That no committee appointed by said Council for such purpose ever examined the premises to be affected by said improvements as required by Sections 7 and 8 of Act No. 52 of the 19th Assembly of the Territory of Arizona". (Record page 25, Paragraph XV-XVI.)

And allege: "That in addition to the arbitrary mathematical assessment hereinbefore referred to, the said commissioners included as a part of the assessments of the property of defendants the alleged value to defendants of a portion of the public highway then existing in the City of Tucson, and known as Maiden Lane, which adjoins the property of these defendants, and which was not included in Congress Street as altered and widened in the

course of improvements actually made and which are involved herein, which the said City of Tucson proposed to deed to these defendants upon the payment of the said proposed assessments against them."

All these denials and allegations were verified by Allen R. English. (Record pages 25 and 26, Paragraphs XVII-XVIII)

To this answer plaintiffs replied by an enlargement of the complaint and a general denial of each and every allegation of the new matter contained in the answer. (Record pages 26 to 30.)

On these pleadings the case was tried and thereafter the trial court made its Findings of Fact, which were adopted in full by the Supreme Court as the statement of facts on appeal, (Record pages 127 to 134) and therefrom made Conclusions of Law and Judgment, (Record, pages 37 to 40).

II.

ASSIGNMENTS OF ERROR.

I.

The Court erred in overruling defendant's pleas of another action pending, (Record, page 18, Par. 2, and page 60, line 10 from top of page).

II.

The Court erred in refusing to make Finding of Fact No. 3 as requested by defendant. (See defendants' requests, Record, page 31.)

III.

The Court erred in refusing to make the Findings of Fact numbered 19, 20 and 21 as requested by defendants, (See defendants' requests, Record, page 35).

IV.

The Court erred in refusing to make Finding of Fact, No. 26, as requested by defendants, (Record, page 36).

V.

The Court erred in making Finding of Fact, Nos. 20 and 23, (Record, pages 133-134).

VI.

The Court erred in making its conclusions of law numbered 9, 10, 11 and 12, (Record, page 39).

VII.

The Court erred in rendering judgment for plaintiff, (Record, pages 39-40).

III.

AUTHORITIES AND ARGUMENT.

FIRST ASSIGNMENT.

The Court erred in overruling defendants' pleas of another action pending. (Record, pages 18 and 60).

We admit that, technically considered, these pleas were defective; but they were quite sufficient to put the Court on notice that this suit was not brought in the name of the REAL PARTY IN INTEREST, as will hereafter more fully appear.

SECOND ASSIGNMENT.

The Court erred in refusing to make defendants' requested Finding of Fact No. 3.

That said petition, (petition for the removal of all private property on Block 206) contained the statement:

"That the land embraced therein be thrown open as a street and thoroughfare, and that all such land between Congress Street, the North side of Maiden Lane, the West side of North Church street, and the East side of Court Street be made into one Street which shall be known as Congress Street", because this is the exact meaning of the PETITION signed by the appellant English and others. (See Record, pages 109-110.)

THIRD ASSIGNMENT.

The Court erred in refusing to make defendants' Finding No. 19: That the City Council did not appoint any committee * * * to make estimate of the costs of the contemplated improvement, as required by Paragraph 471 (Sec. 7) of the Revised Statutes of Arizona, which reads as follows:

"The common council shall appoint three (3) of its members or any three (3) competent persons, who shall make an examination of the premises to be affected and make an estimate of the cost of the

improvements contemplated by such ordinance, including labor materials and all other expenses attending the same, and cost of making and levying the assessment, and shall report the same in writing to said common council."

Because said paragraph is mandatory and such committee should be appointed and then report made before the assessing committee provided for in the next paragraph, No. 472, can be appointed; and there is no proof in the record that any such committee was ever appointed or ever did report, (Record, page 35, and testimony of Frank S. Treat, City Clerk, Record, pages 57 and 58).

FOURTH ASSIGNMENT.

The Court erred in refusing to make requested Finding No. 26:

"That no notice was ever given of the time at which application would be made for the confirmation of the assessment herein involved, or of the time when the same was actually had or made". (Record, page 36.)

It may be that, by paragraphs 478, (Sec. 14) and 479 (Sec. 15), and the practice of this Court, we are estopped from raising any of the objections hereinbefore set out, as appellants did not appeal from the order of the City Council of December 30th, 1903, confirming the assessment; but we submit that appellants had no notice of the time when said confirmation would be made, either before said confirmation or within the twenty days allowed for appeal; and the testimony of City Attorney John B. Wright, of conversations with Mr. English, was of conversations had after the confirmation and

when Mr. Wright was trying to sell the city bonds. (See testimony of Jno. B. Wright, Record, pages 55 to 58.)

FIFTH, SIXTH AND SEVENTH ASSIGNMENTS.

These three assignments of error each goes to the gist of this action, and we will now discuss them together.

FIFTH ASSIGNMENT.

Findings of Fact Nos. 20 and 23 are in direct contradiction to Findings No. 1 to 19 inclusive, because these findings state a cause of action in favor of the City of Tucson, and not in favor of the Territory of Arizona or of the relator, John W. Bogan, Treasurer and Ex-Officio Tax Collector, etc., and findings 20 and 23 are not sustained by any evidence.

SIXTH AND SEVENTH ASSIGNMENTS.

The Conclusions of Law, Nos. 9-10-11 and 12 (Record, page 39), and the judgment (Record, pages 39 and 40) are not sustained by the Findings of Fact, because the findings of fact all, excepting Findings Nos. 20 and 23, plainly state a cause of action in favor of the City of Tucson, for special municipal assessments.

It appears plainly from the complaint and the Findings of Fact, Nos. 1 to 19 inclusive, that this suit was brought to recover special municipal assessments, as authorized to be made by Chapter 2, Title XI, of the Revised Statutes of Arizona of 1901, and plainly the action is not prosecuted in

the name of the real party in interest. Paragraph No. 1299 (Sec. 90) of the Revised Statutes of Arizona of 1901, reads as follows:

"1299 (Sec. 90): Every action shall be prosecuted in the name of the real party in interest: Provided, An executor or administrator, or a trustee of an express trust or a person expressly authorized by statute, may sue without joining with him the person for whose benefit the action is brought".

But the contention of the appellee is that Paragraph No. 488 (Sec. 24) of the Revised Statutes of Arizona of 1901, authorizes the County Collector of Territorial and County taxes to maintain this action in the name of the Territory and to recover the extraordinary interest, penalties and fees as provided for in actions for the collection of delinquent Territorial and County taxes. Taxes, by Act No. 92 of the Session Laws of 1903, 22nd Session, which we will hereafter show, cannot be construed to have any application to suits for the collection of municipal special assessments. Said paragraph No. 488 reads as follows, to-wit:

"488 Sec. 24): The General Revenue Laws of this Territory in reference to proceedings for the collection of delinquent taxes on real property, the sale thereof, the execution of certificates of sale and deeds thereon, the force and effect of such deeds and sales; and all other laws in relation to the enforcement and collection of delinquent taxes and redemption of tax sales, except as herein otherwise provided, shall be applicable to proceedings to collect such special assessments."

But we contend that, to so construe that paragraph, it is necessary to add thereto words of the following import:

"And the County Collector of Territorial and County taxes is hereby expressly authorized to sue in the name of the Territory for such special assessments and in such suits to recover the same interest, penalties and fees as are now or may hereafter be allowed by law in suits for the recovery of delinquent Territorial and County taxes."

But to further show that such construction of Paragraph 488 (Sec. 24) above quoted and of Chapter II of Title XI of the Revised Statutes of Arizona of 1901, of which said paragraph is a part, is not only unwarranted in law, but is also contrary to the plainly expressed intention of the Legislature at the time the same was originally enacted, we copy here, side by side, the two original acts of the Legislature, to-wit: Act No. 57 of the Session Laws of 1897, and Act No. 66 of the Session Laws of 1899, amending the said act No. 57 of the Session Laws of 1897, from which chapter 2 of Title 11 of the Revised Statutes of 1901 was copied in full, and we prefix the paragraph number of the Revised Statutes to each section:

1897.

"No. 57 AN ACT.

Adding to the Powers and Privileges already Vested by Charter in Incorporated Cities.

Be it Enacted by the Legislative Assembly of the Territory of Arizona:

Par. 465, R. S.

SEC. 1. That in addition to the powers already vested in Cities of this Territory by their respective charters and the general laws of this Ter-

ritory Cities and Common Councils in Cities shall have the following powers:

First. To lay out and establish, open, alter, widen, extend, grade, pave or otherwise improve streets, alleys, avenues, side-walks, parks and public grounds, and vacate the same.

(Sub-sections second to twenty-eight, both inclusive, grant general police powers, but nothing in these sub-sections or in any of them is material in this case, and we therefore omit them.)

Par. 466, R. S.

SEC. 2. When any city shall by ordinance provide for the making of any local improvement, it shall by the same ordinance prescribe whether the same shall be made by special assessment, or by taxation of contiguous property, or general taxation or both. But no such improvements shall be made or ordered made by special assessment or taxation of contiguous property in the first instance, unless a petition for the making of such improvement, signed by the owners of a majority of the lineal frontage upon such improvement shall have first been filed with the City Recorder, but this restriction shall not be applicable to, nor limit the Common Council in making and ordering any and all repairs on such improvements, after the same have once been made.

Par. 467 R. S.

Sec. 3. Should said ordinance provide for improvements which require the taking or damaging of property, the proceedings for making just compensation therefor

shall be the same as provided in Title 22, Revised Statutes of this Territory. (Meaning Title 21 of Eminent Domain, as corrected by Act. No. 90 of 1903.)

Par. 468 R. S.

Sec. 4. When the ordinance under which said improvement is ordered to be made shall provide that such improvement shall be made by general taxation, the cost of such improvement shall be levied and collected with and as part of the general taxes of such city, but no street paving in the first instance, or the making or repairing of side-walks shall be made or ordered made, except at the expense of abutting property.

The expense of paving or otherwise improving all street intersections shall be paid out of the general funds of the city, and all cross-walks and intersections of streets and alleys, and across public grounds shall be laid and kept in repair at the expense of the city at large. After a street shall have been once graded to an established grade and improved by special assessment of

ACT NO. 66.

Session Laws of 1899.

Section 1. That Section 4 of Act No. 57 of the Nineteenth Legislative Assembly of the Territory of Arizona, entitled "An Act Adding to the powers and privileges already vested by Charter in Incorporated Cities," approved March 18, 1897, be amended by inserting the words "OR STREET GRADING" after the words "STREET PAVING" in the fifth line of said Section 4.

contiguous property, it shall be kept in repair at the expense of the city. This Section shall not, however, apply to the repair of sidewalks, which in all instances shall be repaired and renewed by the owners of abutting lots, and if not so repaired and renewed on an order made by the Common Council requiring such repair and renewal, and served upon the occupant or owner of the abutting lot, either personally or by mail, within twenty (20) days after such service, then such repairing or renewing shall be done by the city, and the ex pense thereof be and become a lien upon such abutting lot, and be placed in the next tax-roll of such city as a tax upon such property, and collected or said lot sold therefor, as other city taxes are collected or sales made for taxes.

Par. 469 R. S.

Sec. 5. When said ordinance under which said local improvement shall be ordered, shall provide that such improvement shall be made or paid for in whole or in part by special assessment,

ACT NO. 66.
Session Laws of 1899.

To Amend Act No. 57 of the Session Laws of 1897.

Sec. 2. That Section 5 of said Act be amended so as to read as follows: When

or by special taxation of contiguous property, the same shall be levied, assessed and collected in the manner provided in the sections of this Act, providing for the mode of making, levying, assessing and collecting special assessments. But no such special assessment or special tax shall exceed in amount twenty per cent of the value of the property upon which said special assessment or tax is levied, to be determined by the valuation fixed by the last assessment of said property for city taxes.

Par. 470 R. S.

Sec. 6. Whenever such local improvements are to be made wholly or in part by special assessment, the Common Council of such City shall pass an ordinance to that effect, specifying therein the nature, character, locality and description of such improvements, provided, that whenever any such ordinance shall provide only for the building, repairing or renewing of any side-walk, the owner of any lot or piece of land fronting on such side-waulk shall be allowed such ordinance under which said local improvement shall be ordered, shall provide that such improvement shall be made or paid for in whole or in part by special assessment or by special taxation of contiguous property, the same shall be levied, assessed and collected in the manner provided in the Sections of this Act, providing for the mode of making, levying, assessing and collecting special assessments.

thirty (30) days after the time at which such ordinance shall take effect in which to build or renew such side-walk opposite his land, and thereby relieve the same from assessment; provided, that the work so to be done shall in all respects conform to the requirements of such ordinance.

Par. 471 R. S.

Sec. 7. The Common Council shall appoint three (3) of its members or any three (3) competent persons, who shall make an examination of the premises to be affected and make an estimate of the cost of the improvements contemplated by such ordinance including labor, materials and all other expenses attending the same, and cost of making and levying the assessment, and shall report the same in writing to said Common Council.

Par. 472 R. S.

Sec. 8. On such report being made and approved or modified by the said Common Council, it shall be the duty of the Common Council to appoint a committee

of three (3) persons, residents of said city, one of whom shall be the Assessor of the said City, who shall examine the locality where the improvement is proposed to be made, and the lots, blocks, tracts and parcels of land that shall be benefited thereby and to estimate what proportion of the total cost of such improvement will be of benefit to the public and what proportion thereof will be of benefit to the property to be benefited, and apportion the same between the city and such property, so that each shall have its relative equitable proportion, and having found such amounts to apportion and assess such amount so found to be of benefit to the property upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement; provided, that no lot, block or tract of land shall be assessed in a greater amount than it will be actually benefited.

Par. 473 R. S.

Sec. 9. Said committee shall also make or cause to

be made an assessment roll, in which shall appear the names of the owners, so far as known, a description of block, lot, tract or parcel of land and the amount assessed as benefits thereto, and in which shall be set down as against the city the amount they shall have found as public benefit and certify such assessment roll to the Common Council of such City by which they were appointed, within at least thirty (30) days from the date of their appointment.

It shall be the duty of such committee within five (5) days after their appointment to fix a time and place when and where they will meet to consider and decide upon such assessments, which time shall be not less than fifteen (15) nor more than twenty (20) days from the date of their appointment. They shall give notice by mail to each owner of premises to be assessed whose name and place of residence is known to them, or upon diligent inquiry can be ascertained, of the time and place of their meeting, such notice shall be mailed at least ten (10) days before such day of hearing. They

shall also cause notice to be given of such hearing by posting notices in at least four (4) public places in such city, two (2) of which shall be in the neighborhood of such improvement, and by publishing the same at least once in a newspaper published in said city.

The notice shall be substantially as follows:

Special Assessment Notice.

Notice is hereby given to all persons interested, that the Common Council of—— having ordered that (here insert nature and description of improvements substantially as in ordinance) and having appointed the undersigned a committee to examine and report upon such improvement, and to make an assessment of the costs of said improvement according to the benefits upon the property contiguous thereto, a hearing will be had by said committee of all persons interested in said improvement and the lands to be affected by a special assessment thereof at..... on the.....day..... at.....o'clock. All persons desiring may then and there

appear and make any objections they may have to such improvement and assessment

.....

.....

Committee.

All persons intterested in any real estate to be affected by such special assessment may appear and be heard before such committee, with such witnesses as they may produce.

Par. 474 R. S.

Sec. 10. If upon such hearing it shall appear that any premises assessed for said improvements in the roll prepared by such committee are assessed more or less than they will be benefited, or more or less than the proportionate share of the cost of the improvement which such premises should justly bear, the committee shall amend and change its assessment accordingly, and shall certify said roll as so corrected to the Common Council, with the testimony, if any, taken by said commitee.

Par. 475 R. S.

Sec. 11. Upon presentation of such roll and the re-

port of such committee to the Common Council,it shall proceed to examine and reject confirm or modify and confirm the assessment roll and the assessments therein contained, and thereupon if such assessments be confirmed, or modified and confirmed, the same shall stand as a valid tax and be a lien upon the several lots, blocks and pieces of land assessed therein, as other and general city taxes are, to the amount of such assessment against each lot, block or piece of land.

(In the revision of 1901 a proviso is here added that the Common Council may provide for the payment of said assessment by annual installments not to exceed ten, such installments to bear interest, etc., and such interest to be due and payable at the same time as the installments, and to be a lien on the property. And two paragraphs are also here added in the revision, numbered 476 and 477, giving power to the Mayor and Common Council to issue bonds to provide for the payment of such deferred payments, and power to appoint

a committee to sell such bonds, interest on the bonds not to be greater than that provided for in the deferred installments.)

Par. 478 R. S.

Sec. 12. If the owner of any parcel of land assessed for such improvement by special tax feels himself aggrieved by reason of the determination made by the Common Council, he may, within twenty (20) days after the date of such determination, appeal therefrom to the District Court; provided, that in case any contract shall have been made for making the improvements, said appeal shall not affect such contract; and in case the appellant shall succeed, the difference between the amount charged in the assessment roll and the amount adjudged to be paid as benefits accruing to the parcel of real estate described in such assessment roll shall be paid by the city at large.

Par. 479, R. S.

Sec. 13. The appeal given by the last Section shall

be the only remedy of the owner of any parcel of land, or of any person interested therein, affected by said improvement, for the redress of any aggrievance he may have by reason of the making of such improvement.

Par. 480, R. S.

Sec. 14. Upon the confirmation, or modification and confirmation, of such report and assessment by the Common Council, the Recorder of the city shall file the report and assessment, and record the action of the Common Council thereon. And the Mayor and Recorder shall thereupon issue a warrant for the collection of such special assessment and tax, and deliver the same, together with a copy of the assessment roll as confirmed by the Common Council, to the officer authorized to collect the general city taxes; such warrant shall direct the officer aforesaid to collect said tax as in this Act provided, and give sufficient authority to collect the assessment therein, and in such copy of said roll specified

Par. 481, R. S.

Sec. 15. The collector re-

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ceiving such warrant shall immediately give notice thereof by publishing such notice in one or more newspapers in such city, if such newspaper there be, and if no such newspaper, then by posting four copies thereof in public places along the line of the proposed improvement. Such notice shall be substantially in the following form: (Form of notice not questioned.)

Par. 482, R. S.

Sec. 16. It shall be the duty of the Collector in whose hands the warrant shall so come, as far as is practicable to call upon all persons resident within the corporation, whose names are upon the assessment roll, of the occupants of the property assessed, and personally or by written and printed notice, left at his or her usual place of abode, inform them of such assessment and request the payment of the same. Any such collector omitting so to do shall be liable to a penalty of ten dollars ($10) for every such omission, but the validity of the special assessment, or the right to apply for and

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obtain judgment for any such special assessment shall not be affected by such omission It shall be the duty of such collector to write the word "paid" opposite each tract or lot upon which the assessment is paid, together with the name and post-office address of the person making the payment and the date of payment.

Par. 483, R. S.

Sec. 17. It shall be the duty of the collector of special assessments, within such time as the Common Council may by ordinance provide, to make a report in writing to the general officer of the County authorized or to be designated by the general revenue law of this Territory to apply for judgment and sell land for taxes due the County and Territory, of all the lands, town lots and real property, upon which he shall have been unable to collect special assessments, with the amount of special assessments due and unpaid thereon, together with his warrant or a brief description of the nature of the warrant or warrants received by him authorizing

ACT NO 66.

Session Laws of 1899.

To Amend Act No. 57, Session Laws of 1897.

Sec. 3. That Section 17 of said Act be amended so as to read as follows: It shall be the duty of the collector of special assessments, within such time as the Common Council may provide, but in no event later than the 21st day of December of the year in which such assessment was made, to make a report in writing to the general officer of the County authorized by the general revenue law of this Territory to sell for taxes due the County and Territory, of all the lands, town lots and real property

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the collector thereof which report shall be accompanied with the oath of the collector that the list is a correct report and return of the lands, town lots and real property on which the special assessments levied by the authority of the City of ———— remain due and unpaid, that he is unable to collect the same, or any part thereof and that he has given the notice required by law, that said warrants had been received by him for collection.

Said report, when so made, shall be **prima facie** evidence that all of the forms and requirements of the law in relation to making said returns have been complied with, and that the special assessments mentioned in said report are due and unpaid. And upon the application for judgment upon such assessment no defense or objection shall be made or heard which might have been interposed in the proceeding for the making of such assessment or the application for the confirmation thereof.

upon which he shall have been unable to collect special assessments, with the amount of special assessments due and unpaid thereon, together with his warrant or a brief description of the nature of the warrant or warrants received by him authorizing the collection thereof; which report shall be accompanied with the oath of the collector that the list is a correct report and return of the lands, town lots and real property on which the special assessments levied by the authority of the City of ————.....—— remain due and unpaid; that he is unable to collect the same or any part thereof, and that he has given the notice required by law that said warrants had been received by him for collection. Said report when so made shall be prima facie evidence that all of the forms and requirements of the law in relation to making said returns have been complied with and that the special assessments mentioned in said report are due and unpaid. And in any action before any court, wherein the question of the validity of such assessment is an issue, no defense or objec-

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Par. 484, R. S.

Sec. 20.

Sec. 18. When said general officer shall receive the report provided for in the preceding section, he shall proceed TO OBTAIN JUDGMENT AGAINST SAID LOTS, parcels of land and property for said special assessments remaining due and unpaid at the same time and in the same manner as is or may be by law provided for obtaining judgment against lands for taxes due and unpaid the County and Territory, and shall in the same manner proceed to sell the same for the said special assessments remaining due and unpaid. IN OBTAINING SAID JUDGMENT and making said sale, the said officer shall be governed by the general revenue laws of this Territory, except when otherwise provided herein. No application for judgment against lands for unpaid special assessments tion shall be made or heard, which might have been interposed in the proceedings for the making of such assessment or the application for the confirmation thereof.

ACT NO. 66.

Session Laws 1899.

To Amend Act 57 of 1897.

Sec. 4. That Section 18 be amended so as to read as follows:

Upon the delivery of such delinquent list to the County Collector of taxes of such County, such County Collector shall deliver to said City Collector his receipt for the total amount of the special assessments so delinquent, which receipt said City Collector shall file with the City Treasurer, and the City Treasurer shall thereupon charge the amount specified in said receipt to the County Collector. Upon the receipt of said delinquent list it shall be the duty of the County Collector to incorporate said list with the County delinquent list, noting in such list what prop-

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shall be made at a time different from the annual application for judgment against lands upon which general taxes remain due and unpaid.

The application for judgment upon delinquent special assessments in each year shall include only such special assessments as shall have been returned as delinquent to the County Collector on or before the first day of April, in the year in which said application was made.

erty is delinquent for such special assessment by placing the words "City of ——— Special Assessment" at the head of a separate column containing the said City delinquent special assessment; AND HE SHALL SELL SUCH DELINQUENT CITY PROPERTY AT THE SAME TIME AND IN THE SAME MANNER, FOR SUCH CITY DELINQUENT SPECIAL ASSESSMENT, AS REAL PROPERTY IS REQUIRED TO BE SOLD BY LAW FOR COUNTY AND TERRITORIAL DELINQUENT TAXES, GIVING THE SAME NOTICE OF SALE AS IS NOW OR MAY BE REQUIRED BY LAW IN REGARD TO SALES OF REAL ESTATE FOR DELINQUENT COUNTY AND TERRITORIAL TAXES. THE COUNTY COLLECTOR MUST COLLECT IN addition TO THE TAXES DUE ON SUCH SPECIAL ASSESSMENT, SUCH PENALTIES, INTEREST AND COSTS AS ARE PROVIDED BY LAW TO BE COLLECTED ON PROP-

ERTY DELINQUENT FOR COUNTY AND TERRITORIAL TAXES.

Par. 485, R. S.

Sec. 21.

Sec. 19. After making said sales, the list of lots, parcels of land and property sold thereat shall be returned to the office of the County Recorder, and redemption may be made as provided for in the general revenue laws of this Territory.

Par. 486, R. S.

Sec. 22.

Sec. 20. If the Collector shall receive any moneys for taxes ~~or~~ and assessments giving a receipt therefor for any land or parcel of land, and afterward return as unpaid to the County and Territorial officers authorized to sell land for taxes or shall receive the same after making such return and the same be sold for tax or assessment which has been so paid and receipted for by himself or his deputy he and his bondsmen shall be liable to the holder of the certificate given to the purchaser at the

sale for double the amount of the face of the certificate, to be demanded in two years from the date of the sale and recovered in any court having jurisdiction of the account, and the city shall in no case be liable to the holder of the certificate.

Par. 487, R. S.

Sec. 23.

Sec. 21. The Collector or Collectors, and the general officer aforesaid, to whom said warrants shall be returned, shall pay over to the city to which it shall belong all moneys collected by them, respectively, upon or by virtue of said warrant, or upon any sale for taxes or otherwise, at such time or times and in such manner as shall be prescribed by ordinance, and shall be allowed such compensation for their services in the collection of such assessments as the ordinance of the city shall provide, not to exceed the amount of compensation fixed by general law for similar services.

Par. 488, R. S.

Sec. 24.

Sec. 22. The general revenue laws of this Territory in reference to proceedings TO RECOVER JUDGMENT FOR DELINQUENT TAXES, the sale of the property thereon, the execution of certificates of sale and deeds thereon, the force and effect of such sales and deeds, and all other laws in relation to the enforcement and collection of taxes and redemption of tax sales, except as herein otherwise provided, shall be applicable to proceedings to collect such special assessment.

Par. 489, R. S.

Sec. 25.

Sec. 23. Any city interested in the collection of any tax or special assessment may become a purchaser at any sale of real or personal property to enforce the collection of the same, and may, by ordinance, authorize and make it a duty of one or

ACT NO 66.

Session Laws 1899.

To Amend Act No. 57 of 1897.

Sec. 5. That Section 22 of said Act be amended so as to read as follows:

The general revenue laws of this Territory in reference to proceedings for the collection of delinquent taxes on real property, the sale thereof, the execution of certificates of sale and deeds thereon, the force and effect of such deeds and sales; and all other laws in relation to the enforcement and collection of delinquent taxes and redemption of tax sales, except as herein otherwise provided, shall be applicable to proceedings to collect such special assessments.

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more city officers to attend such sale and bid thereat in behalf of the corporation.

Par. 490, R. S.

Sec. 26.

Sec. 24. If any assessment shall be annulled by the Common Council or set aside by any court a new assessment shall be made and returned and like notice given and proceedings had as herein required in relation to the first, and all parties in interest shall have the like rights and the Common Council and Court shall perform like duties and have like powers in relation to any subsequent assessments as are hereby given in relation to the first assessment.

Par. 491, R. S.

Sec. 27.

Sec. 25. If in any case the first assessment prove insufficient a second may be made in the same manner as nearly as may be and so on, until sufficient moneys have been realized to pay for such public improvement. If too large a sum shall at any time be raised the excess shall be refunded ratable to those by whom it was paid.

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Par. 492, R. S.

Sec. 28.

Sec. 26. All persons taking any contract with the City, and who agree to be paid from special assessments, shall have no claim or lien upon the city in any event, except from the collection of the special assessments made for the work contracted.

Par. 493, R. S.

Sec. 29.

Sec. 27. All contracts for the making of any public improvement to be paid for in whole or in part by a special assessment, the expense whereof shall exceed two hundred dollars ($200.00) shall be let to the lowest responsible bidder in the manner to be prescribed by ordinance. Such contracts to be approved by the Mayor of the City, provided, however, that when the expense thereof shall not exceed two hundred dollars ($200.00) any such contract may be entered into by the proper officer without advertising for bids, and without such approval, by vote of two-thirds (2-3) of all the Councilmen elected.

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Par. 494, R. S.

Sec. 30.

Sec. 28. All special assessments levied by any city under this Act, shall from the date of assessment, be a lien upon the real estate upon which the same may be imposed, and such lien shall continue until such special assessments are paid. And the same proceedings may be resorted to by the Collector upon any warrant or order issued or made for the collection of special assessments as in the case of the collection of Territorial and County taxes under the general laws of the Territory.

Par. 495, R. S.

Sec. 31.

Sec. 29. At any time after the same becomes due, it shall and may be unlawful for any Collector thereof to commence suit in any Court of Record, in the corporate name of such City against any person or persons for the total amount of special assessment, which such persons are liable for the payment of. Such suits shall be commenced by complaint and shall state the several

ACT NO. 66.

Session Laws 1899.

To Amend Act 57 of 1897.

Sec. 6. That Section 29 of said Act be amended so as to read as follows:

Any time after the same becomes due, it shall and may be lawful for such City Collector, if so required by the Mayor and Common Council of said City, to commence suit in any Court of

amounts of the special assessments sought to be recovered, and give a general description of the warrant or warrants issued for the collection thereof; upon the filing of the complaint, a summons shall be issued, served and returned as in other suits in such courts. Upon the return of such summons duly served, the Court shall forthwith proceed to the hearing of such complaint without formal pleadings, and may render judgment for all or any part of special assessment, as the right and the justice of the case may require. The original or certified copy (by the Recorder under the corporate seal) of such warrant or warrants and list or lists, or so much thereof as refers to the special assessments sought to be recovered, shall be PRMIA FACIE evidence of the right of said collector to a judgment in favor of such corporation. Executions shall issue upon such judgment as in other cases, but such execution may be first levied upon and collected from any personal property of the defendant; or the Court in which such proceedings were had, may, Record, in the corporate name of such City against any person or persons for the total amount of special assessments for which such person or persons are liable as well as for the foreclosure of such special assessment tax lien. In such action such collector may join as defendants all persons so liable for such City assessments who have not paid the same, but no judgment can be obtained and no foreclosure had against any defendant except for the special assessment so levied against him for his particular piece of property; such action or suits shall be commenced by complaint and shall state the several amounts of the special assessments sought to be recovered, the name of the person or persons owing the same and a description of the property upon which such special assessment is a lien, and give a general description of the warrant or warrants issued for the collection thereof. Upon the filing of the complaint a summons shall be issued and served and returned as in other suits in such Courts. Upon the return of such summons duly served, the

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upon complaint of the city, issue a SCIRE FACIAS against the person or persons liable for such payment, to show cause why execution should not issue against him or them for the amount of such assessment; and if upon return of such SCIRE FACIAS good cause is not shown why execution should not issue, the Court may award execution, against such person or persons, in the usual form of execution upon judgment at law.

court shall therewith proceed to a hearing of such complaint without formal pleadings and may render formal judgment for all or any part of such special assessment against the person or persons respectively liable thereto, as the right and justice of the case may require, and may further decree a foreclosure and sale of the lands upon which such special assessment respectively are a lien, in the same manner as is now provided by law for the foreclosure and sale of liens or mortgages on real estate; and in such action said court may render personal judgment against the persons respectively liable for such special assessments; upon which judgments executions may issue as is now provided by law. The general laws of the Territory of Arizona in reference to the enforcement of judgments and executions, foreclosure sales, rights of redemption, issuance of sheriff's certificates of sale and sheriff's deed shall be applicable to the proceedings under this section, provided, however, that whenever any bonds are issued by the common council of any city, they

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must have been authorized by a vote of the people in accordance with Acts of Congress and the Laws of the Territory of Arizona.

Sec. 7. This Act shall take effect and be in force from and after its passage.

Approved March 16th, 1899.

Par. 496, R. S.

Sec. 32.

Sec. 30. Whenever any city shall apply to any court for the purpose of making just compensation for property taken or damaged by such proceedings as are authorized by this Act, and the laws of the Territory, such city may file in the same proceeding a supplemental petition praying the Court to cause an assessment to be made for the purpose of raising the amount necessary to pay the compensation and damages which may be, or shall have been awarded to the property taken or damaged, with the costs of the proceeding. The said Court shall have the power at any time after such supplemental petition shall have been filed, to appoint three (3)

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commissioners to make such assessment and to ascertain, as near as may be, the costs incurred to the time of such appointment and the probable further cost of the proceeding, including therein the estimated costs of making and collecting such assessments and shall direct such costs to be included by such commissioners in making such assessment. Like proceedings in making said assessment shall be had and the assessment shall be made, collected and enforced in the same manner, as near as may be, as is provided for in this Act in other cases.

Par. 497, R. S.

Sec. 33.

Sec. 31. Any City may levy a tax for general municipal purposes not to exceed for any one year seventy (70) cents on each one hundred dollars of taxable property in such city, provided, that nothing in this Act contained shall limit the powers now given to any incorporated city by its charter.

Sec. 32. This Act shall take effect and be in force from and after its passage.

Approved March eighteenth, 1897.

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From the foregoing transcript of Act No. 57 of the Session Laws of 1897, and Act No. 66 of the Session Laws of 1899, amending said Act No. 57, it will appear that Chapter 2 of Title 11 of the Revised Statutes of 1901 is an exact copy of said Act No. 57, as amended by said Act No. 66, with the exception of the additions thereto made by the revision, as noted on page 28 of this brief, and the omission of sub-sections 2 to 28 of Section one of said Act No. 57, both of which we omit as entirely immaterial.

And if it be admitted that Section 18 of said Act No. 57 (now Sec. 20, Par. 484, Revised Statutes), before it was amended, did EXPRESSLY AUTHORIZE the County Collector of Territorial and County taxes to bring suit for the collection of delinquent special city assessments, it is plain that the amending Act No. 66 of the Session Laws of 1899 took away that authority and confined him to the power to SELL, as provided in the last ten lines of said amending section. (See both these sections, copied on pages 34 and 35 of this brief, and the last ten lines of Paragraph 484 (Sec. 20) of the Revised Statutes of 1901.)

At the time said two acts were passed and at the time they were embodied in the Revised Statutes as Chapter 2 of Title 11, Chapter 7 of Title 62, ENTITLED "REVENUE", provided the mode of collecting delinquent Territorial and County Taxes, to-wit: By publishing a notice of the time and place of sale, of the property delinquent, for four weeks before the day of sale, etc. And we submit that was the mode in which the County Collector was given authority to sell by the said amended Section 18 (now Sec. 20 Paragraph 484, of the Revised Statutes).

And during all that time, and up to this time, and still continuing, the City had a second ample

remedy for the collection of delinquent special assessments, by Sec. 28 of said Act No. 57 (now Paragraph 494 (Sec. 30) of the Revised Statutes), in words as follows:

"494 (Sec. 30): All special assessments levied by any city under this act, shall from the date of assessment, be a lien upon the real estate upon which the same may be imposed, and such lien shall continue until such special assessments are paid. And the same proceedings may be resorted to by the collector upon any warrant or order issued or made for the collection of special assessments as in the case of the collection of territorial and county taxes under the general laws of the territory."

The City also had another remedy, full and ample, by Sec. 29 of said Act No. 57, as amended by Sec. 6 of said Act No. 66, and embodied in the Revised Statutes as Paragraph 495 (Sec. 31) and printed in full on pages 41, 42 and 43 of this brief, but none of these three remedies would justify the PENAL INTEREST, cost and fees embodied in the judgment in this case.

But thereafter, in March, 1903, the Legislature passed Act No. 92, which by no construction can be made to apply to Special Municipal Assessments, but in order to be certain that we comply with the rules of this Honorable Court, we here copy in full said act, because it is on this statute that appellee relies for the recovery of the extreme penal interest, fees and costs embodied in the judgment. (See Record, page 40.)

IV.

"No. 92 AN ACT.

To amend Chapter VII of Title LXII of the Revised Statutes of Arizona, 1901, Entitled "Collection of Delinquent Taxes".

Be it Enacted by the Legislative Assembly of the Territory of Arizona:

Section 1. That Chapter 7 of the Title 62 of the Revised Statutes of Arizona, 1901, be, and the same is hereby amended so that said Chapter shall read as follows:

Section 79. At the meeting of the County Board of Supervisors at which the several delinquent lists are required by law to be returned and certified, the said board of supervisors shall examine and compare the lists of lands and town lots on which the taxes remain due and unpaid: and if any such lands or town lots have been assessed more than once, or if said lands or town lots are not subject to taxation, or if the legal sub-division be incorrectly described, in all such cases the said board of supervisors shall correct such error by the best means in their power and cause the lists so corrected to be certified and filed in the office of the clerk of the board of supervisors and shall also cause the amount of the Territorial and County taxes to be entered on record, and the amount of the Territorial taxes to be certified to the Auditor of the Territory.

Section 80. All real estate upon which the taxes remain unpaid on the second Monday in December, annually, shall be deemed delinquent, and the tax collector shall proceed to enforce the lien of the Territory thereon, as required by this chapter, and any failure to properly return the delinquent list, as required of this chapter, shall in no way affect the validity of the assessment and levy of taxes nor of the judgment and sale by which the collection of the same may be enforced, nor in any manner to affect the lien of the Territory, nor on such delinquent real estate for the taxes unpaid thereon.

Section 81. The clerk of the Board of Supervisors shall file the said lists in his office, and within ten days thereafter make the same into a "back tax book" as contemplated by section 84 under the seal of the board of supervisors, and deliver the same to the tax collector of his county, whose duty it shall be to proceed to collect the same, and to that end shall have the power, and it is hereby made his duty, to levy upon, seize and distrain personal property, and sell the same for such taxes. And if it appears that any board of supervisors or clerk of such board of this Territory has, within five years next, before taking effect of this section, failed in the discharge of the duties prescribed by section 79 and 84 of this chapter, or shall so fail at any time hereafter, to such an extent that the collection of said taxes cannot be enforced by law, it shall be the duty of the said board of supervisors and said clerk or their successors in office, immediately after such omission or defect is discovered, to proceed at once to correct the same and supply the omission or defect and return such corrected "back tax book" to the collector, whose duty it shall be to collect the same, as hereinbefore and hereinafter set forth.

Section 82. The taxes due and unpaid on any real estate which has heretofore been returned delinquent and which has not been forfeited to the Territory, and the taxes due are unpaid on any real estate which has been forfeited to the Territory for the non-payment of such taxes, shall be deemed and held to be back taxes, and the lien heretofore created in favor of the Territory of Arizona is hereby retained on each such tract and lots of real estate to the amount of the taxes due thereon and also the interest and costs accruing under this chapter.

Section 83. Immediately after the taking effect of this chapter, the tax collector of each county

shall return to the board of supervisors of his county all delinquent and forfeited lists of tax bills, of real estate, in his hands, except taxes due prior to the year 1888, which taxes the clerk of the board of supervisors is hereby authorized to strike from the forfeited list, marking thereon all collections made, and shall at the next regular meeting of the board of supervisors make settlements for said collections.

Section 84. Within sixty days after the taking effect of this chapter, and every year thereafter, within thirty days after the settlement of the tax collector, the several clerks of the county boards of supervisors in each county in this Territory shall make in a book to be called the "back tax book" a correct list in numerical order of all tracts of land and town lots on which back taxes shall be due in such county, city or town, setting forth opposite each tract of land or town lot the name of the owner, if known, and if the owner thereof be not known, then to whom the same was last assessed, the description, supervisors of his county, all delinquent and forfeited lists of tax bills, of real estate in his hands, except taxes due prior to the year 1888, which taxes the clerk of the board of supervisors is hereby authorized to strike from the forfeited list, marking thereon all collections made, and shall at the next regular meeting of the Board of Supervisors make settlement for said collection.

Section 84. Within sixty days after taking effect of this chapter and every year thereafter within thirty days after the settlements of the tax collector the several clerks of the county boards of supervisors in each county in this Territory shall make in a book to be called the "back tax book" a correct list in numerical order of all tracts of land and town lots on which back taxes shall be due in

such county, city or town, setting forth opposite each tract of land or town lot the name of the owner, if known, and if the owner thereof be not known, then to whom the same was last assessed, the description thereof, the year or years for which such tract of land or town lot is delinquent or forfeited and the amount of the original tax due each fund on said real estate, (and the interest due on the whole of said tax, at the time of making said "back tax book," together with the clerk's fees then due) in appropriate columns arranged therefor and aggregate amount of taxes, interests and clerk's fees charged against each tract of land or town lot for all the years for which the same is delinquent or forfeited, said "back tax book" when completed shall be delivered by the said clerk to the tax collector of the county, for which he shall take duplicate receipts, one of which he shall file in his office and the other with the Auditor of the Territory, and the clerk of the Board of Supervisors shall charge such tax collector with the aggregate amount of taxes, interest and clerk's fees contained in said "back tax book," all taxes, interests and clerks' fees hereinafter contained in the "back tax book" herein described, shall bear interest from the time of making out said "back tax book" at the rate of ten per cent per annum until paid. In computing interest, under this chapter, a fraction of a month shall be counted as a whole month.

Section 85. The tax collector of the respective counties shall proceed to collect the taxes contained in such "back tax book" as herein required, and any person interested in, or the owner of any land or town lot contained in said "back tax book" may, on or before the 31st day of December, A. D. 1903, redeem such tract of land or town lot or any part thereof, from the Territory's lien thereon, by paying to the tax collector the amount of the orig-

nal taxes, as charged against such tract of lands or town lots described in said "back tax book," together with interest on the same from the first day of January, A. D. 1901, at the rate of ten per cent per annum, and the costs accruing under this chapter, provided, that if suit shall have been commenced against any person owing taxes on any tract of land or town lot contained in said "back tax book" for the collection of taxes due on the same, the person desiring to redeem any such tract of land or town lot shall in addition to the original tax and the interest, and costs accruing under this chapter, pay all necessary costs incurred in the court where the said suit is pending, together with such attorney's fees as the court may allow.

Section 86. If on the first day of January, A. D. 1904, any of said lands or town lots contained in said "back tax book" remain unredeemed it shall be the duty of the tax collector to proceed to enforce the payment of the taxes charged against such tract or lot by suit in the courts of competent jurisdiction of the county where the real estate is situated, which same court shall have jurisdiction without regard to the amount sued for, to enforce the lien of the Territory and for the purpose of prosecuting suit for taxes under this chapter the collector shall have power, with the approval of the county board of supervisors to employ such counsel as he may deem necessary, who shall receive as fees in any suit such sum, not to exceed twenty-five per cent of the amount of the tax actually collected and paid into the treasury, as may be agreed upon in writing and approved by the county board of supervisors before such services are rendered, which sum shall be taxed as costs in the suit and collected as other costs, and no such attorney shall receive any fee or compensation for such services except as in this section provided, and it shall be the duty

of the tax collector when suit shall have been commenced against any tract of land or town lot in said "back tax book" to note opposite said tract of land or town lot such fact also against whom suit has been commenced.

Section 87. All actions commenced under the provisions of this chapter, shall be prosecuted in the name of the Territory of Arizona at the relation and to the use of the tax collector, and against the owners of the property; and all lands owned by the same persons may be included in one petition and in one count thereof, for the taxes for all such years as taxes may be due thereon, and the said petition shall show the different years for which taxes are due, as well as the several kinds of taxes or funds to which they are due, with the respective amounts due to each fund, all of which shall be set forth in a tax bill of said back taxes, duly anthenticated by certificate of the tax collector and filed with the petition, and said tax bill or bills, so certified, shall be prima facie evidence that the amount claimed in said suit is just and correct, and all notices and process in suit under this chapter shall be sued out and served in the same manner as in civil actions in district courts, and in case of suit against non-residents, unknown parties, or other owners on whom service can not be had by ordinary summons, the proceedings shall be the same as now provided by law in civil actions affecting real or personal property. In all suits under this chapter, the general laws of this Territory as to practice and proceedings in civil cases shall apply, so far as applicable and not contrary to this chapter.

Section 88. The judgment, if against the defendant, shall describe the land upon which the taxes are found to be due, shall state the amount of

taxes and interest found to be due upon each tract or lot, and the year or years for which the same are due, up to the rendition thereof, and shall decree that the lien of the Territory be enforced, and that the real estate, or so much thereof as may be necessary to satisfy such judgment, interest and costs, be sold, and execution shall be issued thereon, which shall be executed as in other cases of judgment and execution, and said judgment shall be a first lien upon said land.

The clerk of the district court shall upon application of the tax collector or attorney, issue the execution herein provided for describing the real estate named in the judgment, and directed to the Sheriff, and commanding him to levy upon, advertise and sell said property, or so much therof as may be necessary to pay said judgment and subsequent costs, the same as Sheriff's might do under ordinary execution.

Section 89. The Sheriff shall execute to the purchasers of real estate, sold under this chapter, a deed for the property so sold, which shall be acknowledged before some officer authorized by law to take acknowledgments of deeds, as in ordinary cases, and which shall convey a title in fee to such purchaser of the real estate therein named and shall be conclusive evidence of title, and that the matter and things therein stated are true. In case any person shall be in possession of the real estate which may be sold as herein provided, the district court or the judges thereof out of term time, upon application, shall cause a writ of possession to be issued placing the purchaser or his assigns in possession.

Section 90. When real estate has been sold for taxes, costs or penalties by the Sheriff of any

county within the Territory of Arizona and the same sells for a greater amount than the taxes and all costs and penalties in the case, and the owner or owners, agent or agents cannot be found, it shall be the duty of the sheriff of the county, when such sale has been made or may hereafter be made, to make a written statement describing each parcel or tract of land sold by him for a greater amount than the taxes and all costs and penalties in the case, and for which no owner or owners, agent or agents can be found, together with the amount of surplus money in each case, which statement shall be subscribed and sworn to by the sheriff, making the same before some officer competent to administer oaths in this territory, and then presented to the county board of supervisors of the county where such sale has been made or may hereafter be made, and on the approval of the statement by the board of supervisors, the sheriff making the same shall pay the said surplus money into the County Treasury, take the receipt in duplicate of said Treasurer for said overplus of money, and retain one of said duplicate receipts and file the other with the county board of supervisors, and thereupon the clerk of the Board of Supervisors shall charge said Treasurer with said amount, and said Treasurer shall place said moneys to the credit of the school fund of the county, to be held in trust for the term of ten years for the owner or owners or their legal representatives. And at the end of ten years if such fund shall not be called for, then it shall become a permanent school fund of the county. County boards of supervisors shall compel owners or agents to make satisfactory proof of their claims before receiving their moneys; provided, that no county shall pay interest to the claimant of any such fund.

Section 91. Whenever it shall appear to any county board of supervisors that any tract of land

or town lot contained in said "back tax book" is not worth the amount of taxes, interest, cost and penalties due thereon, as charged in said "back tax book" or that the same would not sell for the amount of said taxes, interest, cost and penalties, it shall be lawful for said board of supervisors to compromise said taxes with the owners of said tract of land or town lot, and upon payment to the tax collector of the amount agreed upon, a certificate of redemption shall be issued under the seal of the county board of supervisors, which shall have the effect to release said lands from the lien of the Territory and all taxes due thereon as charged on said "back tax book" and in case said board of supervisors shall compromise and accept a less amount than shall appear to be due on any tract of land or town lot, as charged on said "back tax book" it shall be the duty of the said board of supervisors to order the amount so paid to be distributed to the various funds to which said taxes are due, in proportion as the amount received bears to the whole amount charged against such tract or lot, provided the county board of supervisors may order that no suit be brought on any specified tract, if, in the judgment of said Board of Supervisors such tract is not worth or will not bring the taxes, interest and costs; and provided further that the county board of supervisors of any county may direct that any tax or fund, the validity of which is being contested in the courts, may be omitted from any suits brought under this chapter, but the judgment rendered in any action where such tax is omitted shall not bar or effect any subsequent action for such tax so omitted, whenever the county board of supervisors may direct an action to be brought for such omitted tax.

Section 92. All suits instituted under the provisions of this chapter, shall be tried at the return

term of the summons, unless continued for good cause shown.

Section 93. Fees shall be allowed for services rendered under the provisions of this chapter as follows:

To the tax collector, four per cent on all sums collected, such per centum to be taxes as costs and collected from the party redeeming.

To the clerk of the county board of supervisors for making the "back tax book" twenty-five cents per tract, or town lots, to be taxed as costs and collected from the party redeeming such tract or town lots.

To the District Court clerk, sheriff, and printer such fees as are allowed by law for like services in civil cases, which shall be taxed as costs in the case provided, that in no case shall the Territory or county be liable for any such costs, nor shall the county board of supervisors or Territorial Auditor allow any claim for any costs incurred by the provisions of this chapter.

Section 94. Any party interested in any tract of land or town lot may pay the taxes, interest and costs thereon, after the commencement of suit, and before sale, by paying to the tax collector the amount of such taxes and interest, and by payment to the district court clerk of all costs thereon; and if execution has been issued the same may be paid to the sheriff, who shall forthwith pay such taxes and interest to the tax collector, and the costs to whom the same are due.

Section 95. The collector shall make diligent endeavor to collect all taxes upon said "back tax book" and whenever he finds that any taxes therein

have been paid he shall report that fact to the county board of supervisors, giving the name of the officer or person to whom such taxes were paid, and he shall also report to the board of supervisors all cases of double assessment or other errors, and thereupon the board of supervisors shall cause the necessary action to be taken and entries to be made.

Section 96. All back taxes, of whatever kind, appearing due upon delinquent real estate shall be extended in the "back tax book" made under the chapter, and collected by the tax collector under authority of this chapter.

Section 97. No action for recovery of taxes against real estate shall be commenced, had or maintained, unless action therefor shall be commenced within five years after delinquency, excepting taxes now delinquent, on which suit may be commenced at any time within five years after this chapter shall take effect, but not thereafter.

Section 98. The sheriff may appoint the tax collector, his deputy sheriff, and when so appointed, he may serve all process in suits commenced under this chapter with like effect as the sheriff himself might do.

Section 99. Hereafter as often as any delinquent tax list or tax-bills shall be received by the board of supervisors from tax collectors at their annual settlements, the same shall be made by the clerk of the board of supervisors, into a "back tax book" containing the same facts and in the same form as provided in section 84, as to the lands, city and town lots now delinquent, and said book shall be delivered to the tax collector, the tax collector shall proceed to collect the taxes due thereon, but shall not bring suit thereon for sixty days after such taxes become delinquent, but thereafter he

shall proceed with such delinquent taxes in all matters the same as provided in this chapter in reference to taxes now delinquent; all taxes hereafter becoming delinquent shall bear one per cent interest per month from the time they become delinquent until paid, and shall also be subject to the same fees, commissions and charges as in this chapter, provided for taxes now delinquent, except that for making the same into the "back tax book" the clerk who makes such book shall receive only fifteen cents per tract, city or town lot. In computing interest under this section, a fraction of a month shall be counted as a whole month.

Section 100. Nothing in this chapter shall be so construed as to prevent the institution of suit before the times herein named, provided that if it be real estate in any county of this Territory, and the owner thereof is about to remove from such county, or, being a non-resident of such county, comes within the same, so that personal service can thereby be had upon him.

Section 101. Any person hereafter putting a tax deed on record in the proper county shall be deemed to have set up such a title to the land described therein as shall enable the party claiming to own the same land to maintain an action for the recovery of the possession thereof against grantee in deed, or any person claiming under him, whether such grantee or person is in actual possession of the land or not.

Section 102. Any failure to make or complete the "back tax book" within the time required herein, or any informality in making said "back tax book" shall in no way effect the validity of the same.

Section 103. The assessment book, and all books, papers and records in the office of the clerk

of the board of supervisors appertaining to the subject of taxation, or copies thereof, duly certified by such clerk, shall be evidence in all courts in all controversies concerning the validity of the sales of lands for taxes.

Section 104. In all advertisements, notices, lists, records, certificates, deeds or other papers, required to be made by or under any of the provisions of this chapter, it shall be lawful to use letters, figures and characters as follows:

Letters may be used to denote townships, ranges, boundaries, parts of sections, parts of lots, blocks, or other subdivisions of real estate in the following manner: T. for township, R. for range, L. for lot, B. for block, N. for North, E. for East, S. for South, W. for West, or any combination or combinations of the four last-mentioned letters to denote parts of sections, lots, blocks, or other subdivisions of real property.

Figures may be used as may be requisite to state any number required whether it be township, range, survey, section, block, lot or part thereof, acres or fraction thereof, date of any kind, amount of taxes, interest or costs, or any other matter or thing which may be stated or given in figures. Characters such as ", ", of the words "do" for "ditto" or "same" may be used to denote continuation of township, range, years, tax due or other dates, and when either shall be so used shall be deemed and held to denote the same as shall stand next above in the column in which any such character or word shall be so placed, any and all decriptions of real estate made under the provisions of this chapter by the use of letters, figures and characters, as provided in this section, when so made that the land or lot may be identified and located shall be

deemed and held to be good, valid and complete, as though the same had been written out in full. Dates of valuation and narration, taxes, interest costs, acres or lots, or any fraction thereof, or any other number or amount when stated in figures' letters or characters, as herein provided, shall be deemed and held to be fully and fairly stated. as though the same had been written out in full.

Section 105. No irregularity in the assessment roll, or omission from the same, or mere irregularity of any kind in any of the proceedings, shall invalidate any such proceeding, or the title conveyed by the tax deed, nor shall any failure of any officer or officers to perform the duties assigned him or them on the day or within the time specified, work any invalidation of any such proceedings, or of such deed, and no overcharge as to a part of the taxes or costs, and payment of such taxes or costs, shall invalidate a sale for taxes, except as to a part of the real estate sold to the proportion of the whole thereof as such part of the taxes and costs is to the whole amount for which land was sold. Acts of officers de facto shall be valid as if they were officers de jure, and if a deed would be valid, as to the sale for any one tax, it shall not be impaired by any irregularity, error in the proceedings or sale for any other tax or taxes.

Section 2. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

Eugene S. Ives, President of the Council. Theodore T. Powers, Speaker of the House.

Approved March 19th, 1903.

Alexander O. Brodie, Governor.

This statute plainly expresses its object, and does not contain one word that can, by any reasonable construction, be made to apply to the collection of Special Municipal Assessments; and yet, in this case, the extraordinary Penal and Confiscatory provisions of this Act are herein applied, and judgment is given for 12 per cent per annum of the assessment, and 25 per cent on the whole thereof for counsel fees, and 4 per cent for collector's fees, besides ordinary costs. Appellee contends, and his contention is sustained by the Courts, that Paragraph 488 (Sec. 24) of the Revised Statutes of 1901, authorizes the relator, John W. Bogan, Tax Collector of Pima County, to bring this suit in the name of the Territory of Arizona, thus ignoring the fact that the original of that Paragraph, Section 22 of Act No. 57 of the Session Laws of 1897 contained the words: "TO RECOVER JUDGMENT FOR DELINQUENT TAXES", and that the amending act No. 66 of the Session Laws of 1899, Sec. 5, left out these words, and left it as it now reads in said paragraph 488 (See page 38 of this brief); and also ignoring the fact that Section 18 of the original Act. No. 57 of 1897 contained the words: "HE SHALL PROCEED TO OBTAIN JUDGMENT AGAINST SAID LOTS", and also contained the words farther on: "IN OBTAINING SAID JUDGMENT", and that the amending act No. 66 of 1899, by Section 4, amended said Section 18, and left out all these words quoted, leaving that section as it now reads in Paragraph 484 of the Revised Statutes of 1901, and thereby plainly expressing the legislative intent to take away the authority attempted to be given to the County Collector to sue for such special municipal assessment. (See the said paragraph and the amending section set out on page 34 of this brief, and to confine him to the power TO SELL as provided in the last sentence of said amending

section on pages 34 and 35 of this brief.)

We respectfully submit that to thus IGNORE the amending act is not CONSTRUCTION OF THE STATUTES but is JUDICIAL LEGISLATION and contrary to the expressed legislative intent. After diligent search of the books at our disposal, we cannot cite any cases, nor any dicta of Court, or text writers that would help this Honorable Court in deciding this case, and we think the reason of that is that no such perversion of the statutes for the purpose of the confiscation of property has hitherto been attempted.

To illustrate: The assessing committee assessed the property of appellants (Lot 5, Block 197) at $75.00 per front foot on Maiden Lane Street, double the amount at which that committee assessed the property on the opposite side (south side of Congress Street), and the reason given for that was that appellants would get a part of said Maiden Lane and a small strip of the block (206) which was removed. (See proceedings of the committee, pages 2 and 3 of the statement of the case, and pages 88 and 89 of the record.)

And neither that committee nor the City of Tucson could give any title to said street or strip, because by the petition of adjoining and fronting owners and by the ordinance No. 168, page 1, of the statement herein and Record page 109, Block 206 was removed to widen Congress Street to and including Maiden Lane, and the judgment of the District Court condemned said Block 206 FOR AN EASEMENT TO WIDEN CONGRESS STREET, etc., page 2 of statement herein, and if said City could give title to said street and strip, it could not compel appellants to take it at such an enormous price.

But, as heretofore stated, it may be that appellants are estopped to question this assessment by reason of the failure to appeal from the confirmation thereof, as provided by Sections 12 and 13 of the original act No. 57 of 1897 (now Paragraphs 478 and 479 Revised Statutes) copied in full on page 28 of this brief, and we will therefore avoid incumbering this brief by any further contention about that assessment and proceed to discuss what we consider the vital point in this, to-wit:

"That the Findings of Fact do not sustain the Judgment."

Because if the justice of the assessment is taken for granted, then the STATEMENT OF FACTS (Record page 127 and following) clearly states a cause of action against appellants in favor of the City of Tucson, IN WHICH NEITHER THE RELATOR, NOR THE TERRITORY OF ARIZONA, NOR THE COUNTY OF PIMA had any interest whatever; and RELATOR, John W. Bogan, was NOT authorized by any law of Arizona to use the name of said Territory to collect a debt due to the said City of Tucson.

And the said City had and still has, ample remedy for the collection of the debt, by Paragraph 494 (Section 30) and Paragraph 495 (Section 31), Chapter 2 of Title 11 of the Revised Statutes of 1901, as amended by Act No. 66 of the Session Laws of 1899, copied in full on pages 41 to 44 of this brief; and besides the City of Tucson, at the relation of its own tax collector, had on April 9th, 1904, and nearly one year before this action was commenced, brought its action against appellants for the collection of the same special assessments, (see defendants' PLEA IN ABATEMENT, Record page 18, and the certificate of the Clerk of

that Court, marked Exhibit A, Record pages 124-125), which action was kept pending by the City Attorney, John B. Wright, who is also one of the counsel for appellee in this case.

And under either of these paragraphs the City could without doubt, recover, and still can recover, not only the assessment, but also interest at the rate of seven per cent per annum, the interest on the bonds issued by the City by virtue of Paragraphs 476-477, Chapter 2, Title 11, of the same Revised Statutes, and as shown by plaintiff's Exhibit B. (Ordinance No. 181, Record pages 9-10-11.)

Therefore the bringing of this action by the relator, in the name of the Territory was neither necessary nor proper, nor was it authorized by the words, nor by the reasonable construction of the words of any statute, and was contrary to the plainly expressed intention of the Legislature in amending the Act of 1897; because if the Legislature, by leaving out from Sections 18 and 22 of the original Act No. 57 of 1897 the words: "HE SHALL PROCEED TO OBTAIN JUDGMENT AGAINST SAID LOTS" and the words: "IN OBTAINING SAID JUDGMENT" and the words: "TO RECOVER JUDGMENT FOR DELINQUENT TAXES", did not intend to take away the authority of the County Tax Collector to sue for special city assessments, then the amendments had no meaning at all, and were entirely useless. (See these sections and their amendments on pages 34, 35, 36, 37 and 38 of this brief.)

And the legislative intent was further expressed by amending Sec. 29 (now Sec. 31, Paragraph 495) to make it read as it now appears in said Paragraph 495, Chapter 2 of Title 11 of the Revised Statutes of 1901, thereby giving the City

a more ample remedy in addition to that given by the prior Paragraph 494 (Sec. 30).

But if the appellee, John W. Bogan, as County Tax Collector of Pima County, had no interest in the collection of the municipal special assessment for $12,533.75 due to the City of Tucson, he now (not officially, but personally) certainly has an intreest and a very substantial interest in the question of the affirmance of this judgment, thus:

Before this case can be decided and record returned to the Supreme Court of Arizona and from there to the trial court, it will be at least four years and a half, and the interest at 12 per cent per annum will amount to more than $6768.00, total $19,-301.00, and on that amount the relator recovers for himself and his counsel 25 per cent, $4825.00, and 4 per cent collector's fee, $772.00, a grand total of $24,900.00, almost double the amount of the original assessment, of which the relator gets $5,597.00, and if the property does not sell for that amount, which we think it will not, then the relator can make the balance by execution against the sureties on the STAY BOND FILED IN THE TRIAL COURT FOR $4,000.00.

And the relator has a still further interest in this judgment because if the judgment is sustained he cannot, under any law, be compelled to pay to the City of Tucson more than the original assessment, $12,533.75, and 7 per cent per annum interest thereon for four and one half years, and the difference between that and 12 per cent per annum is $2,802.00, making a total of $8,399.00. Oh, yes ! the relator has an interest in this judgment.

And under the statutes as hereinbefore quoted, the only authority for the relator to bring this suit

is set out in Finding of Fact No. VIII, Record pages 38 and 39.

In conclusion, we submit that it is plain that this suit was not brought in GOOD FAITH to collect the special municipal assessment, but to gain for the relator unlawful and unreasonable fees and perquisites and thereby entirely confiscate the property of the appellants.

And the result is sought to be reached by the application of a HIGHLY PENAL STATUTE to a case not within its words nor within its purview; for it is plain that Act No. 92 of the Session Laws of 1903, enacted long after the enactment of the two acts of 1897 and 1899, and after the embodiment of these acts in CHAPTER 2, TITLE 11, OF THE REVISED STATUTES OF 1901, could not have been in the mind of the law makers at the time these acts and the revision thereof were enacted, and if the Legislature of 1903 intended said Act No. 92 to apply to Municipal Special Assessments, that legislatrue could and would have found adequate words to express that meaning.

And COURTS never do allow A JUDGMENT for extraordinary interest, costs and counsel fees, except in cases expressly authorized by statute.

Wherefore, we respectfully pray this Honorable Court for a judgment, reversing the judgment of the trial court in this case and directing the trial court to enter a judgment dismissing the action at the cost of the relator, John W. Bogan, because the Territory, whose name he has unlawfully used, can not be made to pay the costs; leaving the City of Tucson the assessment with seven per cent per an-

num, as fully authorized by the statutes as hereinbefore cited.

Respectfully submitted,

JAMES REILLY,
A. C. BAKER·
Attorney for Appellants.

HON. MARCUS A. SMITH,
Of Counsel.

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Office Supreme Court, U. S.
FILED.
APR 20 1909
JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 180.

ALLEN E. ENGLISH AND HONORA ENGLISH, HIS WIFE, APPELLANTS,

vs.

THE TERRITORY OF ARIZONA AT THE RELATION AND TO THE USE OF JOHN W. BOGAN, TREASURER AND EX OFFICIO TAX COLLECTOR IN AND FOR THE COUNTY OF PIMA, IN THE TERRITORY OF ARIZONA.

SUPPLEMENTAL BRIEF FOR APPELLANTS.

MARCUS A. SMITH,
Of Counsel for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES.

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SUPPLEMENTAL BRIEF FOR APPELLANTS.

The substantial injury suffered by appellants appears plainly stated at pages 66-67 of the Main Brief. Shortly stated, it is that whereas, under *then* existing law, their property was assessed for benefits in the sum of $12,533.75, and on default in making the first of five annual instalments thereof, which default occurred thirty days after February 15, 1904 (Main Brief, p. 7), the whole assessment became due and was subject to collection, and whereas suit was immediately upon such default and on April 9, 1904, brought against them by the tax collector of Pima county in the name of the city of Tucson to recover such assessment of

$12,533.75, that action was ignored and a *new* action brought in the name of the Territory to the use of the treasurer and *ex officio* tax collector of Pima county, whereunder judgment has been rendered for such assessment, with interest at *twelve* per centum per annum, *with addition of twenty-five per cent counsel fees and four per cent collector's fees,* making a grand total of nearly $25,000, or almost double the amount of the original assessment.

Among other defenses, it is urged:

1. Another prior action pending for the same assessment and undetermined, and

2. That the act under which the second action was brought, with its added penalty of 12 per cent interest and an allowance of 25 per cent counsel fees, etc., was *not* applicable to this assessment.

I.

THE PRIOR ACTION.

This was plead (R., p. 18), overruled (R., p. 60), and assigned for error (Assignment I, Main Brief, p. 12).

The prior action standing not dismissed clearly constituted a good plea in abatement of the present suit. Dismissal of the prior action would, of course, have eliminated such defense, but it is submitted that the municipality having brought appellants into court in such former action could not sue again for the same principal demand leaving the prior action still in force. The rule as between individuals is and must be the same in respect of this municipality. For it is settled that when even the sovereign enters the courts against the individual, equality of right and obligation obtains in respect of matters, both of substance and form, which bind and affect individual suitors.

United States v. Flint, 4 *Sawyer,* pp. 42, 58.

II.

The Revision of 1901, Laws of Arizona (Main Brief, p. 28), contains the distinct provision authorizing the common council of a municipality to provide for the payment of special assessments of this character by annual instalments at prescribed interest and to issue on basis thereof municipal bonds bearing no greater rate of interest. *In this case* the common council did determine and impose the assessment, payable in such annual instalments, bearing 7 per cent interest, and authorized the issue of city bonds for $30,000 at like rate of interest (R., pp. 9-13) to meet the cost of the improvement. When the entire assessment fell due, on default of payment of the first instalment the debt of the property to the municipality was hence the principal sum, with interest at 7 per centum per annum.

There is hence error in the statement of the opinion below (R., p. 115) that "the assessment became delinquent on December 21, 1904." *Contra,* by the very terms of the assessment it became delinquent thirty days after February 15, 1904, and suit was promptly commenced by the municipality in April, 1904, to enforce collection of the whole assessment.

But the Supreme Court below holds the act of 1903 superseded all former laws and methods for collection of delinquent special assessments. That entire act is printed upon the Main Brief, pp. 47-61. Supplementing the argument which follows thereon, we submit:

A.

Careful reading of the act of 1903 shows the act covers the annual tax assessed against real estate. Thus section 84 (Main Brief, p. 51) provides for the making by the clerks of the several "county boards of supervisors in each county" of a "back-tax book," which shall contain, *inter alia,* "the

description thereof, the *year or years* for which such tract of land or town lot is delinquent." And section 87 (p. 53) provides that in suits brought to collect such delinquent taxes the petition "shall show the *different years* for which taxes are due, as well as the several kinds of taxes or funds to which they are due, with the respective amounts due each fund, all of which shall be set forth in a tax bill of said back taxes, duly authenticated by certificate of the tax collector filed with the petition."

Inspection of the "tax bill" attached to the petition in this case does not disclose the full statement thus required, nor does it give the year for which the tax was claimed as delinquent.

B.

The practical interpretation given the laws of Arizona by the tax-collecting authorities demonstrates their understanding that the law as embodied in the Revision of 1901 controlled in this case, for action was brought thereunder to collect this special-assessment tax, and was still pending when the present suit was brought. That former action sought to recover the amount of the tax as principal and the interest thereon. The present action seeks far more, to wit, an attorney's fee of 25 per cent and collector's fee of 4 per cent additional, while increasing the interest demand to 12 per cent per annum. The appellants are therefore compelled in an action but now of about four years' duration to pay in interest, attorney's fees, and to the collector an amount substantially equal to the original assessment, whereas, assuming judgment in the former action against them, the recovery would be less by something over $5,000. All questions affecting the validity of the assessment were open for determination in the former action, but the opportunity to be mulcted for an attorney's fee of 25 per cent increased interest and collector's commission was apparently lacking. Hence this suit with resulting confiscation. Fur-

ther comment is unnecessary. Certainly, and under such circumstances, when summoned into court upon the same cause of action involved in the former suit its pendency should be a bar to this proceeding. As certainly the plaintiff (the taxing power by whatever name) should not be permitted to challenge its own conduct, nor be permitted to prosecute this action for the private gain of individuals, when its former action remains of record and its demand in *that* action is still existing.

Respectfully submitted,

MARCUS A. SMITH,
Of Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 180.

ALLEN R. ENGLISH AND HONORA ENGLISH, HIS WIFE, APPELLANTS,

vs.

THE TERRITORY OF ARIZONA, AT THE RELATION AND TO THE USE OF JOHN W. BOGAN, TREASURER AND EX-OFFICIO TAX COLLECTOR IN AND FOR THE COUNTY OF PIMA, IN THE TERRITORY OF ARIZONA, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

This is an appeal from the judgment of the Supreme Court of the Territory of Arizona affirming the judgment in favor of the appellee rendered by the trial court.

The city of Tucson is an ancient Spanish pueblo, and its principal thoroughfare, Congress street, prior to June, 1903, was narrow and crooked, and parts of it were obstructed by triangular-shaped blocks. One of these was designated as

block No. 206. In June, 1903, the owners of the majority of the lineal frontage upon this block, among whom was the appellant English, filed a petition with the recorder of the city of Tucson praying that all of block 206 be condemned, and that Congress street be widened so as to include the whole of it (Abstract, folio 308).

On the same day the Mayor and Common Council of Tucson, in response to the petition, passed Ordinance No. 168 (Abstract, folio 307). The ordinance (printed in full in Appendix "A") provides that the cost of the improvement shall be paid by special assessment, to be levied upon the property benefited; that proceedings shall be instituted to condemn all private ownership in block No. 206, and to award just compensation for the property taken. An action was accordingly instituted by the City of Tucson against the owners of block 206, judgment of condemnation entered, and damages fixed in the sum of $46,500.00 (Abstract, folio 308).

Thereafter and in the same action the plaintiff filed a supplementary petition praying the court to cause an assessment to be made upon the property benefited by the improvement for the purpose of paying the compensation awarded, and in December, 1903, the court appointed commissioners to make the assessment (Abstract, folio 309). The commissioners qualified, met, and fixed a time and place when and where they would meet to consider objections to assessments, namely, December 24, 1903, and the City Hall, and notice was given accordingly. Such notice was given to the appellant English (Abstract, folio 311). In the meanwhile the commissioners examined the locality of the improvement, examined the property to be assessed, and made the assessment, and assessed each lot and parcel benefited by the assessment in the amount it was actually benefited by the improvement and no more (Abstract, folio 310). The assessment so made was incorporated in the assessment-roll, in which appeared the names of the owners, a description of

each parcel of land assessed, and the amount assessed as benefits thereto (Abstract, folio 310). The appellant English was the owner of a large lot contiguous to the improvement, lot 5, in block 197, and was assessed $12,533.75.

At the time and place designated in the notices, the commissioners met, so as to permit all persons interested in the assessment to appear and make known their objections. At this meeting English appeared, by his attorney, and stated that he did not desire to object, but only wanted to save his rights in case he should want to object.

Upon the hearing it appeared to the commissioners that the property of English was assessed in the just amount of benefits by the improvement, and the roll was not changed. The commissioners thereupon certified the assessment to the Common Council of the city, together with all the testimony taken at the hearing (Abstract, folios 312-313).

Upon the presentation of the assessment-roll and on December 30, 1903, the Common Council of the city examined the roll and the assessments therein contained and, finding no injustice, confirmed the assessments. The appellant did not feel himself aggrieved by reason of the determination of the council and did not within twenty days appeal therefrom, nor has he since made or attempted to make any such appeal (Abstract, folio 314).

After the assessment had been made and confirmed a warrant was issued for its collection and delivered to the city tax collector (Abstract, folio 315). The collector immediately gave notice that he held the warrant for collection, and personally called upon English, requesting him to pay (Abstract, folio 316). Appellant failed and refused to pay the assessment or any of it and the whole became delinquent (Abstract, folio 317). A suit was then, about the month of April, 1904, instituted by the city to recover the assessment, but no action beyond bringing the suit was taken.

On December 21, 1904, the city collector, having failed to collect the assessment, by suit or otherwise, and the assessment being then due and unpaid, made a report in writing to the general officer of Pima County authorized to collect

county and territorial taxes. In this report the assessment against the property of English was set out fully (Abstract, folio 318). Upon receipt of this report and delinquent list the county collector incorporated the city delinquent list with the county delinquent list (Abstract, folio 319). The delinquent assessment against English was then duly extended upon the back-tax book (Abstract, folios 319-320-321). The county collector endeavored to collect the assessment from English, but was unable to do so, and brought the present action to enforce payment. The former suit brought by the city was dismissed.

English was acquainted with the assessment proceedings from first to last, and at no time objected. On the other hand, he was anxious that the improvement should be made and aided and assisted the city in making it (Abstract, folios 323-324). The city, in order to raise the money owed by English, issued its bonds—for the owners of the property condemned had to be paid in cash—and English assisted the city in the sale and disposal of these bonds (Abstract, folio 324), bonds the city is now obligated to pay.

The facts above set forth are found by the Supreme Court of the Territory and are embodied in the statement of facts on appeal (Abstract, folios 305 to 325).

Upon these facts appellants contend:

1. That the trial court erred in not sustaining the plea of another suit pending.

2. That the trial court erred in not finding that the petition for removal of block 206 contained the statement that all of said block should become a part of Congress street.

3. That the trial court erred in refusing to find that the city did not appoint an appraising committee.

4. That the trial court erred in not finding that no notice was given of the meeting of the Common Council upon the confirmation proceedings.

5. That the assessment was by the front-foot rule and not for benefits.

6. That the appellee cannot maintain this action.

ARGUMENT.

The General Scheme for Assessments.

Appellants' assignment of errors is bad and does not comply with the rules of this court, for the reason that the errors are not specified (Texas and Pacific R. R. *v.* Archibald, 170 U. S., 668). Should the alleged errors be considered, however, and to the end that the court may gain a conception of the matters sought to be urged, the general scheme for making special assessments provided by the statutes of the Territory of Arizona is briefly given:

1. A petition for the making of the improvement, signed by the owners of the majority of lineal frontage upon the improvement, shall be filed with the city recorder.

Section 466 of the Revised Statutes of Arizona, 1901, Appendix "B."

2. An ordinance shall be passed by the Common Council which shall prescribe whether the improvement shall be made by special assessment, or by taxation of contiguous property or by general taxation, or both; and, further, the ordinance shall specify the nature, character, locality, and description of the improvement, and when property is to be taken the ordinance should so provide.

Sections 466, 467, and 470, Revised Statutes of Arizona, 1901, Appendix "B."

3. *A*. When the ordinance does not require the taking of property, a committee of three shall be appointed by the Common Council to examine the premises, estimate the cost of the improvement and other expenses, and report the same in writing to the Common Council.

Section 471, Revised Statutes of Arizona, 1901, Appendix "B."

B. When the ordinance does provide for the taking of property, the proceedings for making just compensation therefor shall be as provided in title 21, Revised Statutes of this Territory (Eminent Domain); where the improvement contemplated by the ordinance is the taking of property, the court shall fix the cost of the improvement, *i. e.*, the just compensation for the property taken, with the costs of the proceedings.

Sections 467 and 496, Revised Statutes of Arizona, 1901, Appendix "B."

4. *A.* When the ordinance does not provide for the taking of property, a second committee shall be appointed by the Common Council, who shall make an assessment upon the property benefited, to raise the amount estimated by the first committee appointed by the council. The committee shall give notice to the property-owners of the time and place when and where they shall meet to hear objections and evidence; they shall make an assessment-roll, therein assessing the benefits, and shall return the roll, together with the testimony taken, to the Common Council.

Sections 472-473-474 and 475, Revised Statutes of Arizona, 1901, Appendix "B."

B. When the ordinance does provide for the taking of property, proceedings to condemn shall be instituted as provided in Title XXI, Revised Statutes. When in this proceeding the property shall have been condemned and the amount of compensation adjudged, then a supplemental petition shall be filed in the court, and the court shall appoint an assessment committee to assess the amount necessary and as fixed by the court. This committee shall meet, give notice to property-owners, make the assessment and assessment-roll, and report to the Common Council. This committee shall be governed by the same rules as those provided for the assessing committee appointed by the Common Council.

Section 496, Revised Statutes of Arizona, 1901. Appendix "B."

5. The Common Council, upon receiving the assessment-roll, shall proceed to modify, confirm, or reject the roll and assessment, and upon the testimony taken by the assessment committee; and if the assessment be confirmed, or modified and confirmed, it shall stand as a valid tax and be a lien upon the property as general taxes are.

Section 475, Revised Statutes of Arizona, 1901, Appendix "B."

It is further provided:

> "If the owner of any parcel of land assessed for such improvement by special tax feels himself aggrieved by reason of the determination of the Common Council, he may, within twenty days (20) after the date of such determination, appeal therefrom to the District Court."
>
> Section 478, Revised Statutes of Arizona, 1901, Appendix "B."

> "The appeal given by the last section shall be the only remedy of the owner of any parcel of land, or of any person interested therein, affected by said improvement, for the redress of any grievance he may have by reason of the making of such improvement."
>
> Section 478, Revised Statutes of Arizona, 1901, Appendix "B."

> "And in any action before any court wherein the question of the validity of such assessment is an issue, no defense or objection shall be made or heard, which might have been interposed in the proceedings for the making of such assessment or the application for the confirmation thereof."
>
> Section 483, Revised Statutes of Arizona, 1901, Appendix "B."

The statutes of the Territory of Arizona relative to special assessments are contained in the appendix to this brief and marked Exhibit "B."

Reply to Contentions of Appellants.

In answering the contentions of the appellants, I shall confine myself to the facts found by the Supreme Court of Arizona.

By act of Congress "Concerning the practice in territorial courts and appeals therefrom," approved April 7, 1874 (18 Stat., pt. 3, page 27), the appellate jurisdiction of the Supreme Court of the United States over the judgments and decrees of the territorial courts is to be exercised in all cases tried to the court without a jury, by appeal; and in such cases, instead of the evidence at large, a statement of the facts of the case, in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the Supreme Court of the Territory or a judge thereof and transmitted to this court with the transcript of the proceedings and judgment or decree.

This court has settled by a long line of decisions that the facts certified by the lower court are conclusive on this court, and that the only question to be determined here is whether the facts so found support the judgment or decree.

> "Congress has prescribed that the appellate jurisdiction of this court over 'judgments and decrees' of the territorial courts, in cases of trial by juries, shall be exercised by writ of error, and in all other cases by appeal; and, on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below; and transmitted to this court with the transcript of the record (act of April 7, 1874, c. 80, sec. 2, 18 Stat., 27, 28). The necessary effect of this enactment is that no judgment or decree of the highest court of a Territory can be reviewed by this court in matter of fact, but only in matter of law. As observed by Chief Justice Waite: 'We are not to con-

sider the testimony in any case. Upon writ of error we are confined to the bill of exceptions, or questions of law otherwise presented by the record; and, upon an appeal, to the statement of facts and rulings certified by the court below. The facts set forth in the statement which must come up with the appeal are conclusive on us' (Hecht *v.* Boughton, 105 U. S., 235, 236. See also: Salina Stock Co. *v.* Salina Creek Irrigation Co., 163 U. S., 109; Gildersleeve *v.* New Mexico Mining Co., 161 U. S., 573; Haws *v.* Victoria Copper Mining Co., 160 U. S., 303; San Pedro & Cañon Del Agua Co. *v.* United States, 146 U. S., 120; Mammoth Mining Co. *v.* Salt Lake Foundry & Machine Co., 151 U. S., 447)."

Marshall *v.* Burtis, 172 U. S., 634-635.

"The Supreme Court of the Territory was called upon to make a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court in the admission or rejection of evidence when excepted to. Our jurisdiction is limited to the consideration of such exceptions and to determining whether the findings of fact support the judgment (Harrison *v.* Perea, 168 U. S., 311; Young *v.* Amy, 171 U. S., 179)."

Crowe *v.* Trickey, 204 U. S., 234.

The Supreme Court of Arizona made a statement of the facts in this case (Abstract, folios 305 to 325), but did not certify to any rulings upon evidence. All questions of evidence are therefore eliminated. Much of the evidence is extended at length in the Abstract; for what purpose I do not know. As stated by Mr. Justice Brewer, speaking for the court, in San Pedro and Cañon Del Agua Co. *v.* United States, 146 U. S., 131, such matter only encumbers the record:

"Hence, notwithstanding the large volume of testimony taken and used in the court below has been incorporated into the record sent to us, we are not at liberty to review the testimony for the purpose of ascertaining whether the findings in the statement of

facts are or are not in accordance with the weight of the evidence. This narrows materially the range of our inquiry."

And here I wish to call the court's attention to a matter that might prove misleading in the Abstract of Record. On page 31 of the Abstract is found "Defendants' request for findings of fact and conclusions of law," in the trial court, and then follows "Findings of fact," signed by W. P. Miller, attorney for defendants. The findings here given and on the succeeding pages, 32, 33, 34, 35, 36, and 37 of the Abstract, were refused by the trial court, and other and complete findings were made; these true findings were omitted from the record without the knowledge or consent of appellee and by the direction of appellants (Abstract, folios 93 and 343).* The abstract now before the court then proceeds:

"And from the foregoing facts the court makes the following CONCLUSIONS OF LAW." (Abstract, folio 93.)

Next follows the true conclusions of law, signed by the judge of the trial court and made and based upon the true findings of fact, which have been omitted. The abstract, as made up, might well lead this court to believe that the conclusions of law were based upon the refused and denied findings presented by the appellants. The true findings of fact made by the trial court are identical with the statement of facts made by the Supreme Court (Abstract, folios 305 to 325, inclusive) and abundantly sustain the conclusions of law.

As before stated, therefore, there being no certification of exceptions to evidence by the Supreme Court of Arizona or any judge thereof, the one question or matter for the determination here is, Do the findings of fact or statement of facts made by the Supreme Court of the Territory support the judgment?

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*NOTE.—The true findings have now been sent up, at request of appellee.

1. *Appellants' First Assignment: That the trial court erred in not sustaining the plea of another suit pending.*

Appellants confess, on page 14 of their brief, that their plea of another suit pending was bad, and do not argue the assignment. It need not, therefore, be considered.

2. *Appellants' Second Assignment: That the trial court erred in not finding that the petition for removal of block 206 contained the statement that all of said block should become a part of Congress street.*

The court did so expressly find in the true findings, omitted from the record, at the request of appellants. (See Findings of Supreme Court, Abstract, folios 307 and 308, which findings are conceded by the appellants to be the same as those of the trial court—Brief, page 12.) But, again, the assignment is not argued, is immaterial, and is wholly without merit.

3. *Appellants' Third Assignment: That the trial court erred in refusing to find that the city did not appoint an estimating or appraising committee.*

The improvement for which the assessment was here levied was one consisting entirely of the taking of property. The whole and entire improvement was the removal of a block in the midst of a street. It was necessary to condemn under the Eminent Domain act, and condemnation proceedings were had. The cost of the improvement was fixed by the judgment of the court in this proceeding, and the court further fixed, as directed by statute, the cost of making and levying the assessment.

It has been shown in the brief synopsis of the statutes heretofore made, that two methods of determining the cost of improvements and making assessments are provided: Where

the ordinance for the improvement does not require the taking of property, the Common Council shall appoint an appraising committee; and when this committee has reported, shall appoint a second committee to make the assessment. Where the ordinance does provide for the taking of property, and this is the improvement, condemnation proceedings shall be had, and the amount determined by the court shall constitute the cost of the improvement; and the court shall appoint the assessing committee to assess the amount so determined. In one instance the council acts, in the other the court. It would indeed be strange to require a court and jury to determine the amount, and also require a committee of the Common Council to do likewise, and it would be stranger still if the two bodies should agree. The assignment is without merit.

4. *Appellants' Fourth Assignment: That the trial court erred in not finding that no notice was given of the meeting of the Common Council upon the confirmation proceedings.*

In special assessment proceedings, but one notice to the owner of the property assessed is required.

> "It is settled that, if provision is made 'for notice to and hearing of each proprietor, at some stage of the proceedings, upon the question what proportion of the tax shall be assessed upon his land, there is no taking of his property without due process of the law' (McMillen *v.* Anderson, 95 U. S., 37; Davidson *v.* New Orleans, 96 U. S., 97; Hagar *v.* Reclamation District, 111 U. S., 701; Spencer *v.* Merchant, 125 U. S., 345)."
>
> Paulsen *v.* Portland, 149 U. S., 41.

The statutes of Arizona provide:

> "It shall be the duty of such committee (assessing commissioners), within five (5) days after their appointment, to fix a place when and where they will

> meet to consider and decide upon such assessments, which time shall be not less than fifteen (15), nor more than twenty (20) days from the date of their appointment. They shall give notice by mail to each owner of premises to be assessed, whose name and place of residence is known to them, and upon diligent inquiry can be ascertained, of the time and place of their meeting; such notice shall be mailed at least ten (10) days before such day of hearing. They shall also * * * post notices and publish the same, and the notice shall be in certain form."
>
> Sec. 473, Revised Statutes of Arizona, 1901, Appendix "B."

This is the sole and only notice required by the statute. This notice was given in strict conformity with the statute (Abstract, folios 311, 312). In response to this notice, appellant appeared at the time and place designated in the notice and "entered a protest against the said assessment on said defendant's property, without stating any reason why the said assessment was unjust or unlawful, but did expressly state that the said protest was made for the sole purpose of saving the question of review; and further stated that the said A. R. English did not wish to intimate that he had any objections, but wanted to save his right to it if any he should have" (Abstract, folio 323).

All the steps taken in making a special assessment constitute but one proceeding; and the appellants, having been regularly brought into the proceedings by due and legal notice and having appeared, were bound to take notice of when the Common Council would meet to confirm the assessments, without further service. The statute of the Territory requiring but one notice is valid, and was obeyed to the letter.

5. *It is contended, but not assigned as error, that the assessment was by the front-foot rule and not for benefits.*

In their statement of the case, appellants have extended excerpts from the evidence, which standing alone might be misleading. I refer to pages 3 and 4 of Brief. As setting forever at rest all matters appertaining to the basis of the assessment, I quote the finding of the Supreme Court of the Territory thereon:

> "That said commissioners (duly appointed) examined the locality where the said improvement was proposed to be made, and the lots, blocks, tracts, and parcels of land that shall (should) be benefited thereby, and estimated what proportion of the total cost of such improvement would be of benefit to the public, and what proportion thereof would be of benefit to the property benefited, and apportioned the same between the city and such property, so that each had its relative equitable proportion; and having found such amounts, said commissioners apportioned and assessed such amounts so found to be a benefit to the property upon the several lots, blocks, tracts and parcels of land, in the proportion in which they were severally benefited by such improvement; but that no lot, block, tract or parcel of land was assessed by said commissioners in a greater amount than it was actually benefited" (Abstract, folios 309 and 310).

The question of benefits, and the property to which these benefits extend, is of necessity a question of fact.

Spencer *v.* Merchant, 125 U. S., 353.

Appellants' property was assessed in the amount it was actually benefited by the improvement and no more.

6. *Appellants' Fifth Assignment: That findings of fact 20 and 23 are not sustained by the evidence.*

Here again the assignment is not argued and is evidently made with little faith. We have only to call the court's attention to the point that the Supreme Court of Arizona made these findings as well as the trial court, and there is not a scrap of evidence before this court; and, in addition, the most cursory examination of these findings will show that they are in reality conclusions of law, based upon findings already made.

7. *Appellants' Sixth and Seventh Assignments: That appellee cannot maintain this action.*

Appellants in effect concede that, by reason of their failure to object in the assessment proceedings and to appeal from the confirmation by the council, they are foreclosed on the merits; accordingly they rest their appeal on the one point, that appellee cannot maintain this action.

In the discussion here I shall not go behind the Revised Statutes of Arizona of 1901. This revision contains all of the law in force at the time, and with the amendments constitutes the whole statute law of the Territory.

The contention is, that this action cannot be maintained by the Territory of Arizona at the relation of the treasurer and tax collector of Pima County.

The statutes provide for two methods of enforcing the collection of delinquent assessments.

First Plan: At any time after special assessments become due, the Common Council may authorize the city collector to begin an action. Suit may or may not be brought, as the council may elect. If the action is brought, it is of a summary character.

> Section 495, Revised Statutes of Arizona, 1901, Appendix "B."

Second Plan: "It shall be the duty of the collector of special assessments, within such time as the Common Council may provide, *but in no event later than the 21st day of December* of the year in which the said assessment was made, to make a report in writing to the general officer of the county, authorized by the general revenue laws of the Territory, to sell for taxes due the county and Territory, all of the lands, town lots and real property upon which he shall have been unable to collect special assessments, with the amount of special assessments due and unpaid thereon," etc.

Section 483, Revised Statutes of Arizona, 1901, Appendix "B."

> "Upon the delivery of such delinquent list to the county collector of taxes of such county, such county collector shall deliver to said city collector his receipt for the total amount of the special assessments so delinquent, which receipt said city collector shall file with the city treasurer, and the city treasurer shall thereupon charge the amount specified in said receipt to the county collector. Upon the receipt of said delinquent list, it shall be the duty of the county collector to incorporate said list with the county delinquent list * * *; and he shall sell such delinquent city property at the same time and in the same manner, for such city delinquent special assessments, as real property is required to be sold by law for county and territorial delinquent taxes." * * *
>
> Section 484, Revised Statutes of Arizona, 1901, Appendix "B."

The two plans above outlined were re-enacted at the same time, in the same act, and are to be construed together and harmonized. In this there is no difficulty. The first plan *may* be followed, and if by it the assessment is collected prior to December 21 following the assessment, the matter ends, for in such event the tax is no longer "due and unpaid." The quick summary method has proven sufficient. If, however, the first method, if followed, has not resulted in the actual collection and payment of the tax prior to December

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21, then the tax, whether in suit or not, is "due and unpaid," the city collector has "been unable to collect," and he *must* report the tax for collection to the county official. In such event the duties of the city collector end with his report and he is no longer known in the transaction. The money when collected is not paid to him, but direct to the city treasurer. On making his report the city collector loses jurisdiction.

The point is clearly brought out by the Supreme Court of Ohio upon similar statutes:

> "These sections clearly give the corporation power to sue within two years (here until Dec. 21st of each year) for the collection of such assessments as have not been certified to the county auditor, but after such assessment has been so certified, the power of the corporation to sue for and collect the same no longer exists, and thereafter the right of action for the collection of such assessment is vested alone in the county treasurer, and he shall collect the assessments with, and in the manner as State and county taxes. It is therefore clear that the city of Bellaire had no cause of action against said defendants below." * * *
>
> Central Ohio *v.* City of Bellaire, 67 Ohio State, 297.

After December 21 of each year, there is, therefore, but one method for the collection of delinquent assessments. On December 21, 1904, the assessment in this case being due and unpaid, the city collector, in compliance with the statute, reported the tax as due and unpaid, and the county collector incorporated the tax with his delinquent territorial and county taxes (Abstract, folios 317, 318, and 319).

The argument being narrowed to the point that the remedy must be enforced by the county officer, a matter now conceded by the appellants, the sole inquiry that remains is, What is the method of enforcement to be pursued by this official?

In the year 1901 all the laws of Arizona were codified and revised. The method then provided for the collection of

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delinquent county and Territorial taxes was as follows: The tax collector should publish notice of delinquent taxes, and state the time and place that delinquent property should be sold, unless the taxes were paid; the property, if not redeemed, should be sold by the tax collector, and the purchaser should receive a certificate of sale, and thereafter, and in a year, if the taxes still remained unpaid, the tax collector should give a deed of the property sold to the purchaser. Such were the provisions for the enforcement of collection of the general revenue. In the Special Assessment act of the same revision it is provided that the county officer "shall sell such delinquent city property at the same time and in the same manner, for such city delinquent assessment, as real property is required to be sold by law for the county and territorial delinquent taxes, giving the same notice of sale as is now or may be required by law in regard to sales of real estate for delinquent county and Territorial purposes" (section 484, Appendix).

Here, then, was a uniform method for the collection of all delinquent taxes of whatever character, and that it was the intention of the Legislature that all delinquent taxes should be collected in the same manner is convincingly shown by section 488, Revision 1901, Arizona, Appendix "B."

> "The general revenue laws of this Territory in reference to proceedings for the collection of delinquent taxes on real property, the sale thereof, the execution of certificates of sale and deeds thereon, the force and effect of such deeds and sales, and all other laws in relation to the enforcement and collection of delinquent taxes, and redemption of tax sales, except as herein otherwise provided, shall be applicable to proceedings to collect such special assessments."

With the law in this condition, the Legislature, in 1903, repealed the entire chapter on the enforcement of delinquent

taxes on real property, and provided that all back or delinquent lists should be made into a book called the "Back Tax Book;" that the treasurer and *ex-officio* tax collector should bring suit upon said delinquencies in the name of the Territory of Arizona; that said suit should be placed in judgment, execution issue, and the property sold thereunder.

That no doubt might exist as to what delinquencies should be thus enforced, it is provided:

> "SECTION 96. All back taxes, of whatever kind, appearing due upon delinquent real estate shall be extended in the Back Tax Book, made under this chapter, and collected by the tax collector under authority of this chapter."

We then have this result: The city collector must certify delinquent special assessments to the county officer, to be incorporated by him in the general delinquent list and collected as county and territorial delinquent taxes are collected; and the county collector must extend in the Back Tax Book his delinquent list, containing "all back taxes of whatever kind," and collect the same by suit. *It is the one method now provided by law for the enforcement of delinquencies,* the other by sale, deed, etc., having been repealed.

I cannot do better than quote from the opinion in this case of the Supreme Court of Arizona. The sections of Act No. 92, Laws of Arizona, 1903, referred to *supra* and by the court, are contained in appendix to this brief and marked "C."

> "It is contended by the counsel for appellants that Act No. 92 of the Laws of 1903, providing for suits to be instituted to recover delinquent taxes by the tax collectors of the several counties in the name of the Territory has no application to delinquent special assessments levied by cities under the provisions of said chapter 2, title II, of the Revised Statutes:
>
> "Paragraph 483 of the Revised Statutes, being section 19 of said chapter 2, title II, provides that when

the city collector shall be unable, before the 21st day of December of the year in which any special assessment is made, to collect any such special assessment, he shall deliver the delinquent list of all the lands, town lots and real property upon which he shall have been unable to collect such special assessments, with the amount of the same due and unpaid, to the tax collector of the county, who shall incorporate said list with the county delinquent list. The next section provided that the tax collector of the county shall sell the delinquent city property for city delinquent special assessments at the same time and in the same manner as real property is required to be sold by law for county and territorial delinquent taxes.

"These sections considered alone might well be construed as excluding any other method of collecting delinquent special assessments than as therein provided, which was the method provided by the general revenue laws of the Territory for the collection of delinquent taxes on real property in force at the time chapter 2, title II, took effect. We think, however, that paragraph 488 should be construed with paragraph 484 in this connection. Paragraph 488 reads:

" 'The general revenue laws of this Territory in reference to proceedings for the collection of delinquent taxes on real property, the sale thereof, the executions of certificates of sale and deeds thereon, the force and effect of such deeds and sales, and all other laws in relation to the enforcement and collection of delinquent taxes and redemption of tax sales, except as herein otherwise provided, shall be applicable to proceedings to collect such special assessments.'

"Act 92 of the Laws of 1903 repealed the general revenue law of the Territory in reference to proceedings for the collection of delinquent taxes on real property. By this act the tax collector was deprived of his power to sell real property for delinquent taxes levied thereon. In lieu of such sale the statute provided for suits to be instituted against the several delinquent taxpayers by the tax collector in the name of and for the use of the Territory. Unless, therefore, the act of 1903 applies to delinquent special assessments, there would be no method provided by

the existing statutes for the sale of delinquent city property for delinquent special assessments. A reading of section 84 of the act will make clear that the intent of the legislature was to make the method of collecting delinquent taxes provided for in the act applicable to all delinquent taxes which may appear on the tax roll. Said section reads:

"'Within sixty days after the taking effect of this chapter, and every year thereafter, within thirty days after the settlement of the tax collector, the several clerks of the county boards of supervisors in each county in this Territory, shall make in a book to be called the "Back Tax Book" a correct list in numerical order of all tracts of land and town lots on which back taxes shall be due in such county, city or town, setting forth opposite each tract of land or town lot the name of the owner,' etc.

"Again, section 96 of said act reads:

"'All back taxes, of whatever kind, appearing due upon delinquent real estate shall be extended in the "Back Tax Book" made under this chapter, and collected by the tax collector under authority of this chapter.'

"We conclude, therefore, that this suit has properly been brought in the name of the Territory, at and by the relation and to the use of the Treasurer and tax collector of the county" (Abstract, folios 279-282, inclusive).

After the above decision was rendered, appellants obtained a rehearing and submitted an elaborate brief on the point in question. Upon this rehearing the court say:

> "We have carefully reviewed the questions raised by this appeal in the light of the supplemental briefs filed upon rehearing, but find no reason to change our views and decision as expressed in the opinion written by Mr. Justice Sloan upon the original submission of the cause" (Abstract, folio 301).

While it is true that the ruling of the Supreme Court of the Territory on a construction of local statutes does not in

any way preclude this court from reviewing it, yet such a construction is always entitled to great respect.

> "It is true that this ruling of the Supreme Court of the Territory does not, even in a question of practice arising under the local law, preclude this court from reviewing it, as would a decision of a State Supreme Court in similar circumstances; but unless a manifest error is disclosed, we should not feel disposed to disturb a decision of the Supreme Court of a Territory construing a local statute. So far from discovering manifest error in that ruling, we concur with the Supreme Court of the Territory in their disposition of the question."
>
> Fox *v.* Haarstick, 156 U. S., 679.

> "On the other hand, while this court cannot refuse to exercise its own judgment, it naturally will lean toward the interpretation of a local statute adopted by the local court."
>
> Copper Queen, etc., *v.* Arizona Board, 206 U. S., 479.

> "The construction of the statute by the local courts (this also was an appeal from the Supreme Court of Arizona) is of great, if not of controlling, weight."
>
> Lewis *v.* Herrera, 208 U. S., 314.

The ruling of the Supreme Court of Arizona that this action was properly brought and maintained is unquestionably sound.

This disposes of the points relied on by the appellants.

Statutes on Assessments Followed to the Letter.

A comparison of the statutes of Arizona with the findings of fact on appeal by the Supreme Court will show that the statutes, in the making of the present assessment, were followed to the letter. While a substantial compliance is all the law demands, here is a literal, technical one.

A. A petition signed by the owners of a majority of the lineal frontage on the improvement was filed with the recorder of the city.

B. An ordinance was passed, in due form, by the Common Council, based upon the petition.

C. As the improvement called for condemnation of property, an action was instituted in a competent court, the property condemned, and the amount of compensation or cost determined.

D. A supplemental petition was filed and assessment commissioners appointed.

E. The commissioners gave notice to the property-owners, assessed the property for benefits received, heard objections, and made their report.

F. The Common Council confirmed the assessment.

And appellants neither objected nor appealed.

> "In nearly all of the States, probably in all of them, provision is made by law for the correction of errors and irregularities of assessors in the assessment of property for the purposes of taxation. This is generally through boards of revision or equalization, as they are often termed, with sometimes a right of appeal from their decisions to courts of law. * * * If not corrected by some of the methods pointed out by the statute, they are conclusive, whatever errors may have been committed in the assessment."
>
> Stanley *v.* Supervisors, 121 U. S., 550.

Where the statute provides a special remedy, it excludes every other.

Savings Bank *v.* U. S., 19 Wallace, 38.

The following authorities are also in point:

Village of West Duluth *v.* Norton, 63 Minn., 497.
Thompson *v.* People, 184 Ills., 17.
Allen *v.* City of Lebanon, 146 Ind., 125.
McSherry *v.* Wood, 102 Cal., 651.
City of New Whatcom *v.* Bellingham, 18 Wash., 181.
Annie Wright Seminary *v.* City of Tacoma, 23 Wash., 109.

The judgment of the Supreme Court of Arizona is right and should be affirmed.

Respectfully submitted,

SAMUEL L. KINGAN,
Attorney for Appellee.

APPENDIX.

EXHIBIT "A."

"Ordinance No. 168.

"Providing for Altering and Widening Congress Street, Between Church Street and Court, in the City of Tucson, Arizona.

"Whereas, a petition has been filed with the City Recorder of the city of Tucson, signed by the owners of the majority of the lineal frontage upon block 206 in said city, praying that proceedings be taken to condemn all private property in said block 206, and that the land embraced therein be thrown open as a street and thoroughfare and made a part of Congress street, and that such improvement be made by special assessment; and

"Whereas, it is necessary to condemn the said block 206 and all thereof for public use for the purpose of widening and improving Congress street between Church street and Court street;

"Now, therefore, be it ordained by the Mayor and Common Council of the City of Tucson, as follows:

"SECTION 1. That Congress street, between Church street and Court street, in the city of Tucson, Arizona, be opened and widened so as to include all of the land now lying in block 206 of said city, bounded on the east by Church street and on the South by Congress street, on the west by Court street and on the north by Maiden Lane.

"SEC. 2. *Be it further enacted,* That it is necessary to widen the said Congress street between the limits above described, and to condemn the said block 206 and all thereof, for said purpose of so widening Congress street.

"SEC. 3. That proceedings be at once instituted by the proper officers of this city for the purpose of having said premises and the improvements thereon condemned; and for making just compensation therefor to the end that the legal right and title to remove the said improvements and

convert the said described lands to public use shall vest in the city.

"SEC. 4. That all that part of Maiden Lane lying between Church street on the east and Court street on the west, and all of the premises described in section 1, after the condemnation and removal of the improvements thereon, shall become a part of said Congress street, for public use.

"SEC. 5. All costs, damages and expenses incurred in carrying out the provisions of this ordinance shall be defrayed by special assessment, to be levied upon the several lots, blocks, tracts and parcels of land within this city that shall be benefited by the said improvement, in the proportion in which they will be severally benefited by such improvement.

"SEC. 6. This ordinance shall be in effect from and after its passage and approval.

"SEC. 7. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

"Passed and approved by the Mayor and Common Council of the City of Tucson this 19th day of June, A. D. 1903.

"Approved June 19, 1903.

"C. F. SCHUMACHER, *Mayor.*

"Attest:

"[SEAL.] N. E. HAWK,

"Ex Officio City Clerk pro Tem."

"EXHIBIT 'B.'

"166. (SEC. 2.) When any city shall, by ordinance, provide for the making of any local improvement, it shall by the same ordinance prescribe whether the same shall be made by special assessment or by taxation of contiguous property or general taxation, or both. But no such improvement shall be made or ordered made by special assessment or taxation of contiguous property in the first instance, unless a petition for the making of such improvement, signed by the owners of a majority of the lineal frontage upon such improvement shall have first been filed with the city recorder, but this restriction shall not be applicable to nor limit the common council in making and ordering any and all repairs on such improvements after the same have once been made.

"467. (SEC. 3.) Should said ordinance provide for improvements which require the taking or damaging of property, the proceedings for making just compensation therefor shall be the same as provided in title 21, Revised Statutes of this territory.

"468. (SEC. 4.) When the ordinance under which said improvement is ordered to be made shall provide that such improvement shall be made by general taxation, the cost of such improvement shall be levied and collected with and as part of the general taxes of such city, but no street paving or street grading in the first instance, or the making or repairing of sidewalks shall be made or ordered made, except at the expense of abutting property.

"The expense of paving or otherwise improving all street intersections shall be paid out of the general funds of the city, and all cross walks and intersections of streets and alleys and across public grounds shall be laid and kept in repair at the expense of the city at large. After a street shall have been once graded to an established grade and improved by special assessment of contiguous property, it shall be kept in repair at the expense of the city. This section shall not, however, apply to the repair of sidewalks, which in all instances shall be repaired and renewed by the owners of abutting lots, and if not so repaired and renewed on an order made by the common council requiring such repair and renewal, and served upon the occupant or owner of the abutting lot, either personally or by mail, within twenty (20) days after such service, then such repairing or renewing shall be done by the city and the expense thereof be and become a lien upon such abutting lot and be placed in the next tax-roll of such city as a tax upon such property and collected or said lot sold therefor, as other city taxes are collected or sales made for taxes.

"469. (SEC. 5.) When such ordinance under which said local improvement shall be ordered shall provide that such improvement shall be made or paid for in whole or in part by special assessment or by special taxation of contiguous property, the same shall be levied, assessed, and collected in the manner provided in the sections of this act, providing for the mode of making, levying, assessing, and collecting special assessments.

"Special Assessments.

"470. (SEC. 6.) Whenever such local improvements are to be made wholly or in part by special assessment, the common council of such city shall pass an ordinance to that effect, specifying therein the nature, character, locality, and description of such improvements: *Provided*, That whenever any such ordinance shall provide only for the building, repairing or renewing of any sidewalk, the owner of any lot or piece of land fronting on such sidewalk shall be allowed thirty (30) days after the time at which such ordinance shall take effect in which to build or renew such sidewalk opposite his land, and thereby relieve the same from assessment: *Provided*, That the work so to be done shall in all respects conform to the requirements of such ordinance.

"471. (SEC. 7.) The common council shall appoint three (3) of its members or any three (3) competent persons, who shall make an examination of the premises to be affected and make an estimate of the cost of the improvements contemplated by such ordinance including labor, materials and all other expenses attending the same, and cost of making and levying the assessment, and shall report the same in writing to said common council.

"472. (SEC. 8.) On such report being made and approved or modified by said common council, it shall be the duty of the common council to appoint a committee of three (3) persons, residents of said city, one of whom shall be the assessor of said city, who shall examine the locality where the improvement is proposed to be made, and the lots, blocks, tracts and parcels of land that shall be benefited thereby and to estimate what proportion of the total cost of such improvement will be of benefit to the public and what proportion thereof will be of benefit to the property to be benefited, and apportion the same between the city and such property, so that each shall have its relative equitable proportion, and having found such amounts to apportion and assess such amount so found to be of benefit to the property upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement: *Provided*, That no lot, block or tract of land shall be assessed in a greater amount than it will be actually benefited.

"473. (SEC. 9.) Said committee shall also make or cause to be made an assessment roll, in which shall appear the names of the owners, so far as known, a description of block, lot, tract or parcel of land, and the amount assessed as benefits thereto, and in which shall be set down as against the city the amount they shall have found as public benefit, and certify such assessment roll to the common council of such city by which they were appointed, within at least thirty (30) days from the date of their appointment.

"It shall be the duty of such committee within five (5) days after their appointment to fix a time and place when and where they will meet to consider and decide upon such assessments, which time shall be not less than fifteen (15) nor more than twenty (20) days from the date of their appointment. They shall give notice by mail to each owner of premises to be assessed whose name and place of residence is known to them or upon diligent inquiry can be ascertained, of the time and place of their meeting, such notice shall be mailed at least ten (10) days before such day of hearing. They shall also cause notice to be given of such hearing by publishing notices in at least four (4) public places in such city, two (2) of which shall be in the neighborhood of such improvement, and by publishing the same at least once in a newspaper published in said city. The notice shall be substantially as follows:

"*Special Assessment Notice.*

"Notice is hereby given to all personally interested, that the common council of —— having ordered that (here insert nature and description of improvements substantially as in ordinance), and having appointed the undersigned a committee to examine and report upon such improvement, and to make an assessment of the costs of said improvement according to the benefits upon the property contiguous thereto, a hearing will be had by said committee of all persons interested in said improvement and the lands to be affected by a special assessment therefor at —— on the —— day of —— at —— o'clock. All persons desiring may then and there appear and make any objections they may have to such improvement and assessment.

"——— ———,
"——— ———,
"——— ———,

"All persons interested in any real estate to be affected by such special assessment may appear and be heard before such committee with such witnesses as they may produce.

"474. (SEC. 10.) If upon such hearing it shall appear that any premises assessed for said improvements in the roll prepared by such committee are assessed more or less than they will be benefited, or more or less than the proportionate share of the cost of the improvement which such premises should justly bear, the committee shall amend and change its assessment accordingly, and shall certify said roll as so corrected to the common council, with the testimony, if any, taken by said committee.

"475. (SEC. 11.) Upon presentation of such roll and the report of such committee to the common council, it shall proceed to examine and reject, confirm or modify and confirm the assessment roll and the assessments therein contained, and thereupon if such assessments be confirmed, or modified and confirmed, the same shall stand as a valid tax and be a lien upon the several lots, blocks and pieces of land assessed therein, as other and general city taxes are, to the amount of such assessment against each lot, block or piece of land.

"*Provided, however*, That the common council shall have the right and power to provide that such tax may be paid in equal annual installments not to exceed ten in number, the first installment to be payable on the day of said levy, and each subsequent installment annually thereafter until the entire tax is paid. Each such installment shall bear interest from the date of levy until paid at such a rate per annum as the common council may prescribe, but in no event at a less rate than five per centum per annum. The interest on each installment shall be due and payable at the same time as the installment is due and payable and shall be a lien on the property assessed to the same extent as the tax levied, and shall be deemed and considered as a part of the tax.

"The failure to pay any installment of said tax when the same is due and payable shall make the entire tax due and payable and proceedings shall be taken by the proper officers for the collection of the entire tax so levied and remaining unpaid, as is now or may hereafter be provided for the collection of delinquent taxes or special assessments.

"476. (SEC. 12.) In the event the common council may elect to provide that such special assessment tax shall be paid

in annual installments as above provided, then and in such event the cost and expense of the improvement for which said special assessment was made may in the first instance be paid out of any funds on hand or out of moneys borrowed from the city for the purpose; and for the purpose of raising money to pay for such improvement in the first instance the mayor and common council may issue bonds of the city in an amount not exceeding the expense and cost of such improvement; such bonds to bear interest at a rate not greater than the rate of interest provided for the deferred installments of such tax. All moneys realized from the special assessment tax aforesaid, or so much thereof as may be necessary, shall be applied to the payment of principal and interest on said bonds.

"477. (SEC. 13.) The common council of all cities having over two thousand inhabitants are hereby empowered to appoint a commission of not less than five or more than seven taxpayers of their respective cities, who shall have power to negotiate and sell all bonds that have been voted by the citizens of said city; to make all contracts for public improvements that shall amount to more than ten thousand dollars and to superintend the construction of same. The city council shall define the duties of the commissioners, fix amount of bonds to be given by them, and their compensation.

"478. (SEC. 14.) If the owner of any parcel of land assessed for such improvement by special tax feels himself aggrieved by reason of the determination made by the common council, he may within twenty (20) days after the date of such determination, appeal therefrom to the district court; *Provided*, That in case any contract shall have been made for making the improvements, said appeal shall not affect such contract; and in case the appellant shall succeed, the difference between the amount charged in the assessment roll and the amount adjudged to be paid as benefits accruing to the parcel of real estate described in such assessment roll shall be paid by the city at large.

"479. (SEC. 15.) The appeal given by the last section shall be the only remedy of the owner of any parcel of land, or of any person interested therein, affected by said improvement, for the redress of any grievance he may have by reason of the making of such improvement.

"480. (SEC. 16.) Upon the confirmation, or modification and confirmation, of such report and assessment by the com-

mon council, the recorder of the city shall file the report and assessment, and record the action of the common council thereon. And the mayor and recorder shall thereupon issue a warrant for the collection of such special assessment and tax, and deliver the same, together with a copy of the assessment roll as confirmed by the common council, to the officer authorized to collect the general city taxes; such warrant shall direct the officer aforesaid to collect said tax as in this act provided, and give sufficient authority to collect the assessment therein, and in such copy of said roll specified.

"481. (SEC. 17.) The collector receiving such warrant shall immediately give notice thereof by publishing such notice in one or more newspapers in such city, if such newspaper there be, and if no such newspaper then by posting four copies thereof in public places along the line of the proposed improvement. Such notice shall be substantially in the following form:

"Special Assessment Notice.

"Public notice is hereby given that the common council of the city of —— have levied and assessed a special assessment upon the property benefited by the following improvement (here insert the character and location of the improvement in general terms) as will more fully appear from the assessment roll for such special assessment on file in the office of the city recorder of said city that a warrant for the collection of such assessment is in the hands of the undersigned. All persons interested are hereby notified to call and pay the amounts assessed at the collector's office (here insert location of office) within thirty (30) days from the date hereof.

"Dated this — day of ——.

"——— ———,
"Collector.

"482. (SEC. 18.) It shall be the duty of the collector in whose hands the warrant shall so come, as far as practicable to call upon all persons resident within the corporation, whose names are upon the assessment roll, of the occupants of the property assessed, and personally or by written and printed notice, left at his or her usual place of abode, inform them of such assessment and request the payment of same.

Any such collector omitting so to do shall be liable to a penalty of ten dollars ($10) for every such omission, but the validity of the special assessment, or the right to apply for and obtain judgment for any such special assessment shall not be affected by such omission. It shall be the duty of such collector to write the word 'paid' opposite each tract or lot upon which the assessment is paid, together with the name and post-office address of the person making the payment and the date of payment.

"483. (SEC. 19.) It shall be the duty of the collector of special assessments, within such time as the common council may provide, but in no event later than the 21st day of December of the year in which such assessment was made, to make a report in writing to the general officer of the county authorized by the general revenue law of this territory to sell for taxes due the county and territory, of all the lands, town lots and real property upon which he shall have been unable to collect special assessments, with the amount of special assessments due and unpaid thereon, together with his warrant or a brief description of the nature of the warrant or warrants received by him authorizing the collection thereof; which report shall be accompanied with the oath of the collector that the list is a correct report and return of the lands, town lots and real property on which the special assessment levied by the authority of the city of —— remain due and unpaid; that he is unable to collect the same or any part thereof, and that he has given the notice required by law that said warrants had been received by him for collection. Said report when so made shall be *prima facie* evidence that all of the forms and requirements of the law in relation to making said returns have been complied with and that the special assessments mentioned in said report are due and unpaid. And in any action before any court, wherein the question of the validity of such assessment is an issue, no defense or objection shall be made or heard, which might have been interposed in the proceedings for the making of such assessment or the application for confirmation thereof.

"484. (SEC. 20.) Upon the delivery of such delinquent list to the county collector of taxes of such county, such county collector shall deliver to said city collector his receipt for the total amount of the special assessments so delinquent, which receipt said city collector shall file with the

city treasurer, and the city treasurer shall thereupon charge the amount specified in said receipt to the county collector. Upon the receipt of said delinquent list it shall be the duty of the county collector to incorporate said list with the county delinquent list, noting in such list what property is delinquent for such special assessment by placing the words 'city of —— special assessment' at the head of a separate column containing the said city delinquent special assessment; and he shall sell such delinquent city property at the same time and in the same manner, for such city delinquent special assessment, as real property is required to be sold by law for county and territorial delinquent taxes, giving the same notice of sale as is now or may be required by law in regard to sales of real estate for delinquent county and territorial taxes. The county collector must collect in addition to the taxes due on such special assessment, such penalties, interest and costs as are provided by law to be collected on property delinquent for county and territorial taxes.

"485. (SEC. 21.) After making said sales, the list of lots, parcels of land and property sold thereat shall be returned to the office of the county recorder, and redemption may be made as provided for in the general revenue laws of this territory.

"486. (SEC. 22.) If the collector shall receive any moneys for taxes or assessments giving a receipt therefor for any land or parcel of land, and afterwards return as unpaid to the county and territorial officers authorized to sell land for taxes or shall receive the same after making such return and the same be sold for tax or assessment which has been so paid and receipted for by himself or his deputy, he and his bondsmen shall be liable to the holder of the certificate given to the purchaser at the sale for double the amount of the face of the certificate, to be demanded in two years from the date of the sale and recovered in any court having jurisdiction of the account, and the city shall in no case be liable to the holder of the certificate.

"487. (SEC. 23.) The collector or collectors, and the general officer aforesaid, to whom said warrants shall be returned, shall pay over to the city to which it shall belong all moneys collected by them, respectively, upon or by virtue of said warrant, or upon any sale for taxes or otherwise, at such time or times and in such manner as shall be prescribed by ordinance, and shall be allowed such compensation for their services in the collection of such assessments as the ordinance

of the city shall provide, not to exceed the amount of compensation fixed by general law for similar services.

"488. (SEC. 24.) The general revenue laws of this territory in reference to proceedings for the collection of delinquent taxes on real property, the sale thereof, the execution of certificates of sale and deeds thereon, the force and effect of such deeds and sales; and all other laws in relation to the enforcement and collection of delinquent taxes and redemption of tax sales, except as herein otherwise provided shall be applicable to proceedings to collect such special assessments.

"489. (SEC. 25.) Any city interested in the collection of any tax or special assessment may become a purchaser at any sale of real or personal property to enforce the collection of the same, and may, by ordinance, authorize and make it a duty of one or more city officers to attend such sale and bid thereat in behalf of the corporation.

"490. (SEC. 26.) If any assessment shall be annulled by the common council or set aside by any court, a new assessment shall be made and returned, and like notice given and proceedings had as herein required in relation to the first, and all parties in interest shall have the like rights and the common council and court shall perform like duties and have like powers in relation to any subsequent assessment as are hereby given in relation to the first assessment.

"491. (SEC. 27.) If in any case the first assessment prove insufficient a second may be made in the same manner as nearly as may be and so on, until sufficient moneys have been realized to pay for such public improvement. If too large a sum shall at any time be raised the excess shall be refunded ratable to those by whom it was paid.

"492. (SEC. 28.) All persons taking any contract with the city, and who agreed to be paid from special assessments shall have no claim or lien upon the city in any event, except from the collection of the special assessments made for the work contracted for.

"493. (SEC. 29.) All contracts for the making of any public improvement to be paid for in whole or in part by a special assessment, the expense whereof shall exceed two hundred dollars ($200.00) shall be let to the lowest responsible bidder in the manner to be prescribed by ordinance. Such contracts to be approved by the mayor of the city; *Provided, however,* That when the expense thereof shall not exceed two

hundred dollars ($200.00) any such contract may be entered into by the proper officer without advertising for bids, and without such approval, by vote of two-thirds (⅔) of all the councilmen elected.

"494. (SEC. 30.) All special assessments levied by any city under this act, shall from the date of assessment, be a lien upon the real estate upon which the same may be imposed, and such lien shall continue until such special assessments are paid. And the same proceedings may be resorted to by the collector upon any warrant or order issued or made for the collection of special assessments as in the case of the collection of territorial and county taxes under the general laws of the territory.

"495. (SEC. 31.) Any time after the same becomes due, it shall and may be lawful for such city collector, if so required by the mayor and common council of said city, to commence suit in any court of record, in the corporate name of such city against any person or persons for the total amount of special assessments for which such person or persons are liable as well as for the foreclosure of such special assessment tax lien. In such action such collector may join as defendants all persons so liable for such city assessments who have not paid the same, but no judgment can be obtained and no foreclosure had against any defendant except for the special assessment so levied against him for his particular piece of property; such action or suits shall be commenced by complaint and shall state the several amounts of the special assessments sought to be recovered, the name of the person or persons owing the same and a description of the property upon which such special assessment is a lien, and give a general description of the warrant or warrants issued for the collection thereof. Upon the filing of the complaint a summons shall be issued and served and returned as in other suits in such courts. Upon return of such summons duly served, the court shall therewith proceed to a hearing of such complaint without formal pleadings and may render formal judgment for all or any part of such special assessment against the person or persons respectively liable thereto, as the right and justice of the case may require, and may further decree a foreclosure and sale of the lands upon which such special assessment respectively are a lien, in the same manner as is now provided by law for the foreclosure and sale of liens or mortgages on real estate; and in such action

said court may render personal judgment against the persons respectively liable for such special assessments; upon which judgments executions may issue as is now provided by law. The general laws of the Territory of Arizona in reference to the enforcement of judgments and executions, foreclosure sales, rights of redemption, issuance of sheriff's certificates of sale and sheriff's deed shall be applicable to the proceedings under this section: *Provided, however,* That whenever any bonds are issued by the common council of any city, they must have been authorized by a vote of the people in accordance with acts of Congress and the laws of the Territory of Arizona.

"496. (SEC. 32.) Whenever any city shall apply to any court for the purpose of making just compensation for property taken or damaged by such proceedings as are authorized by this act, and the laws of the Territory, such city may file in the same proceeding a supplemental petition praying the court to cause an assessment to be made for the purpose of raising the amount necessary to pay the compensation and damages which may be, or shall have been awarded to the property taken or damaged, with the costs of the proceeding. The said court shall have the power at any time after such supplemental petition shall have been filed, to appoint three (3) commissioners to make such assessment, and to ascertain as near as may be the costs incurred to the time of such appointment and the probable further cost of the proceeding, including therein the estimated costs of making and collecting such assessments and shall direct such costs to be included by such commissioners in making such assessment. Like proceedings in making said assessment shall be had and the assessment shall be made, collected and enforced in the same manner, as near as may be, as is provided for in this act in other cases.

"497. (SEC. 33.) Any city may levy a tax for general municipal purposes not to exceed for any one year seventy (70) cents on each one hundred dollars of taxable property in such city: *Provided*, That nothing in this act contained shall limit the powers now given to any incorporated city by its charter."

"EXHIBIT 'C.'

"No. 92.

"An Act to Amend Chapter VII of Title LXII of the Revised Statutes of Arizona, 1901, Entitled 'Collection of Delinquent Taxes.'

"*Be it enacted by the Legislative Assembly of the Territory of Arizona.*

"SECTION 1. That Chapter 7 of the Title 62 of the Revised Statutes of Arizona, 1901, be, and the same is hereby amended so that said chapter shall read as follows:

"SECTION 84. Within sixty days after taking effect of this chapter and every year thereafter within thirty days after the settlements of the tax collector the several clerks of the county boards of supervisors in each county in this Territory shall make in a book to be called the 'back tax book' a correct list in numerical order of all tracts of land and town lots on which back taxes shall be due in such county, city or town setting forth opposite each tract of land or town lot the name of the owner, if known and if the owner thereof be not known, then to whom the same was last assessed, the description thereof, the year or years for which such tract of land or town lot is delinquent or forfeited and the amount of the original tax due each fund on said real estate (and the interest due on the whole of said tax, at the time of making said 'back tax book' together with the clerk's fees then due), in appropriate columns arranged therefor and aggregate amount of taxes, interest and clerk's fees charged against each tract of land or town lot for all the years for which the same is delinquent or forfeited; said 'back tax book' when completed shall be delivered by the said clerk to the tax collector of the county for which he shall take duplicate receipts, one of which he shall file in his office and the other with the auditor of the Territory, and the clerk of the board of supervisors shall charge such tax collector with the aggregate amount of taxes, interest, and clerk's fees contained in said 'back tax book,' all taxes, interests, and clerk's fees hereinafter contained in the 'back tax book' herein described, shall bear interest from the time of making out said 'back tax book' at the rate of ten per cent per annum until

paid. In computing interest, under this chapter, a fraction of a month shall be counted as a whole month.

"SECTION 86. If on the first day of January, A. D. 1904, any of said lands or town lots contained in said 'back tax book' remain unredeemed it shall be the duty of the tax collector to proceed to enforce the payment of the taxes charged against such tract or lot by suit in the courts of competent jurisdiction of the county where the real estate is situated, which same court shall have jurisdiction without regard to the amount sued for, to enforce the lien of the Territory and for the purpose of prosecuting suit for taxes under this chapter the collector shall have power, with the approval of the county board of supervisors, to employ such counsel as he may deem necessary who shall receive, as fees in any suit such sum, not to exceed twenty-five per cent of the amount of the tax actually collected and paid into the treasury, as may be agreed upon in writing and approved by the county board of supervisors before such services are rendered, which sum shall be taxed as costs in the suit and collected as other costs, and no such attorney shall receive any fee or compensation for such services except as in this section provided, and it shall be the duty of the tax collector when suit shall have been commenced against any tract of land or town lot in said 'back tax book' to note opposite said tract of land or town lot such fact also against whom suit has been commenced.

"SECTION 87. All actions commenced under the provisions of this chapter, shall be prosecuted in the name of the Territory of Arizona at the relation and to the use of the tax collector, and against the owners of the property; and the lands owned by the same persons may be included in one petition and in one count thereof, for the taxes for all such years as taxes may be due thereon, and the said petition shall show the different years for which taxes are due, as well as the several kinds of taxes or funds to which they are due, with the respective amounts due to each fund, all of which shall be set forth in a tax bill of said back taxes, duly authenticated by certificate of the tax collector and filed with the petition, and said bill or bills, so certified, shall be *prima facie* evidence that the amount claimed in said suit is just and correct and all notices and process in suit under this chapter shall be sued out and served in the same manner as in civil actions in district courts, and in case of suit against

non-residents, unknown parties, or other owners on whom service can not be had by ordinary summons, the proceedings shall be the same as now provided by law in civil actions affecting real or personal property. In all suits under this chapter, the general laws of this Territory as to practice and proceedings in civil cases shall apply, so far as applicable and not contrary to this chapter.

"SECTION 96. All back taxes, of whatever kind, appearing due upon delinquent real estate shall be extended in the 'back tax book' made under this chapter, and collected by the tax collector under authority of this chapter."

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 180.

ALLEN R. ENGLISH AND HONORA ENGLISH, His Wife, Appellants,

vs.

THE TERRITORY OF ARIZONA AT THE RELATION AND TO THE USE OF JOHN W. BOGAN, TREASURER AND EX OFFICIO TAX COLLECTOR IN AND FOR THE COUNTY OF PIMA, IN THE TERRITORY OF ARIZONA.

REPLY BRIEF FOR APPELLEE.

In their reply brief appellants complain:

1. That at the time of the commencement of this action another action was pending; and

2. That the act of the Legislature of Arizona, Act No. 92, Laws of 1903, is inapplicable.

I.

PRIOR ACTION.

It has been shown in the main brief for appellee that the action brought by the City of Tucson in April, 1904, and in which action nothing was done beyond commencing

it, fell and ended on December 21, 1904, because of lack of power on the part of the municipality to bring or maintain an action after the municipality had certified all of its delinquencies to the county official for collection. The present action by the county official was not begun until April, 1905, long after the former suit had ended.

And again the former suit was dismissed.

And again appellants have admitted (page 14 of their brief) that their plea was so defective as not to merit consideration.

And finally on this point, the plea of another suit pending is a plea in abatement, and in this instance does not go to the jurisdiction. On appeal, this court will not consider a plea of this nature.

Barzilla Stephens *vs.* Monongahela, etc., 111 U. S., 197.

II.

Act of 1903 Only Law Applicable.

Appellants appear to be under the impression that Act No. 92, Laws of Arizona 1903, was not in force at the time the assessment here in question was made. The act was passed in March, 1903. The assessment was made in December, 1903. It was the one law in force relating to the collection of delinquencies during the whole period covered by this assessment, and is yet the law.

As heretofore shown in the main brief, and as pointed out by the Supreme Court of Arizona in deciding this case below, it is the *one* method provided for the collection of delinquencies. Appellants say the law is harsh and imposes penalties. There was an excellent way to avoid these penalties.

The judgment should be affirmed.

Respectfully submitted,

Samuel L. Kingan,
Attorney for Appellee.

Mr. James Reilly, Mr. A. C. Baker and *Mr. Marcus A. Smith* for appellants.

Mr. Samuel L. Kingan for appellee.

MR. JUSTICE MCKENNA delivered the opinion of the court.

This suit was brought in the District Court of Pima County, Arizona, by the Territory of Arizona to collect a delinquent special assessment levied by the city of Tucson on the property of appellants for the payment of the improvement of Congress street in that city. The assessment was levied under the provision of chapter 2 of title 11 of the Revised Statutes of the Territory. The Territory obtained judgment for the amount of the assessment, $12,533.75, which was affirmed by the Supreme Court of the Territory.

The contentions that appellants made in the Supreme Court of the Territory as far as appears from its opinion were, (1) That the Territory, at the relation of the treasurer and *ex officio* tax collector of Pima County, had no right to bring this suit, but that such right was in the city tax collector. (2) (*a*) That the assessment was erroneous because the cost of the improvement was divided "by the arbitrary front foot rule," and that the assessment was made upon that basis and not upon the basis of benefits derived from such improvement; (*b*) the committee appointed under the act to make the assessment took into consideration the value to appellants of a certain narrow strip of land lying between the lot of appellants and Congress street, left open and unoccupied in the widening and improvement of the street. (3) That the appellants had no notice, actual or constructive, when the common council would act upon the report of the committee. (4) That the property was not subject to special assessment because appellants' property was not contiguous to the improvement made. The Supreme Court of the Territory decided all of the contentions against appellants, the last one on the ground that the complaint alleged that appellants' property was contiguous to the im-

provement, which allegation was not denied by the answer. That contention, therefore, we may take no further notice of.

The first contention is repeated here, and it invokes our construction of the statutes of the Territory against that made by the Supreme Court. If there were doubt we should certainly lean to the construction given by the Supreme Court. *Copper Queen Mining Co.* v. *Arizona Board*, 206 U. S. 474, 479. But we think there is no doubt. There is no dispute as to the proceedings taken, so far as they could vest authority in the relator Bogan as county tax collector to bring this suit. The dispute turns upon the law. Paragraph 483 of the Revised Statutes of the Territory as amended in 1897 provides that "it shall be the duty of the collector of special assessments, within such time as the common council may provide, but in no event later than the 21st of December of the year in which such assessment was made, to make a report in writing to the general officer of the county authorized by the general revenue law to sell for taxes due the county and Territory, of all the lands, town lots and real property upon which he shall be unable to collect special assessments, with the amount due of special assessments and unpaid thereon, together with his warrant or a brief description of the nature of the warrant received by him authorizing the collection thereof; . . . that he is unable to collect the same or any part thereof, and that he has given notice required by law that said warrants have been received by him for collection." It is further provided that the report when made shall be *prima facie* evidence that all of the forms and requirements of the law have been complied with, and that the special assessments mentioned in the report are due and unpaid. "And in any action before any court, wherein the question of the validity of such assessment is an issue, no defense or objection shall be made or heard which might have been interposed in the proceedings for the making of such assessment or the application for the confirmation thereof." It is provided in the next section that the county collector shall incorporate said list with the county

delinquent list, and "shall sell such delinquent city property at the same time and in the same manner for such city delinquent special assessment as real property is required to be sold by law for county and Territorial delinquent taxes." The Supreme Court said that "this section construed alone might well be considered as excluding any other method of collecting delinquent special assessments." But the court further said that paragraph 488 should be considered. That paragraph reads as follows:

"The general revenue laws of this Territory in reference to proceedings for the collection of delinquent taxes on real property, the sale thereof, the execution of certificates of sale and deeds thereon, the force and effect of such deeds and sales; and all other laws in relation to the enforcement and collection of delinquent taxes and redemption of tax sales, except as herein otherwise provided, shall be applicable to proceedings to collect such special assessments."

The court pointed out that the Act 92 of the Laws of 1903 repealed the general revenue law of the Territory in reference to proceedings for the collection of delinquent taxes, and substituted for a sale of the property by the tax collector a suit by that officer in the name and for the use of the Territory. The court said: "Unless, therefore, the act of 1903 applies to delinquent special assessments there would be no method provided by the existing statutes for the sale of delinquent city property for delinquent special assessments." And the court concluded that §§ 84 and 96 of the Acts of 1903 make "the method of collecting delinquent taxes provided for in the act applicable to all delinquent taxes which may appear on the roll." Section 84 provides:

"Within sixty days after the taking effect of this chapter, and every year thereafter, within thirty days after the settlement of the tax collector, the several clerks of the county boards of supervisors in each county in this Territory shall make in a book to be called the 'back tax book' a correct list in numerical order of all tracts of land and town lots on which

back taxes shall be due in such county, city or town, setting forth opposite each tract of land or town lot the name of the owner," etc.

Section 96 reads as follows:

"All back taxes, of whatever kind, appearing due upon delinquent real estate shall be extended in the 'back tax book' made under the chapter and collected by the tax collector under authority of this chapter."

Appellants contest the construction made by the Supreme Court of the Territory, but we have said that, unless in a case of manifest error, this court will not disturb a decision of the Supreme Court of a Territory construing a local statute. *Fox* v. *Haarstick*, 156 U. S. 674, 679. There is certainly not manifest error in the ruling in the present case. Indeed, we see no reason to doubt its correctness.

Of the second contention of appellants, that the assessment was made according to the "arbitrary front foot rule," and not upon the basis of benefits derived from the improvement, the Supreme Court said that even if the record showed that the committee in the respects named had improperly assessed the property, that appellants, not having followed the remedy given by the statutes for a revision of the assessments, were precluded from complaint, citing *Stanley* v. *Supervisors*, 121 U. S. 550.

But be this as it may, it was certainly decided in *Stanley* v. *Supervisors* that the question of special benefit and the property to which it extends is of necessity a question of fact, and the Supreme Court found that the commissioners appointed examined the locality of the improvement, ascertained to what extent the public would be benefited and to what extent there would be benefits to property, and found also the amounts that the property would be benefited, "apportioned and assessed such amounts so found to be a benefit to the property upon the several lots, plots, tracts and parcels of land, in the proportion of which they were severally benefited by such improvements." It was further found that no lot was assessed for a greater amount than it was actually

ENGLISH *v.* TERRITORY OF ARIZONA *ex rel.* GRIFFITH, TREASURER OF PIMA COUNTY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

No. 180. Submitted April 26, 1909.—Decided June 1, 1909.

Where there is doubt as to the construction of a statute of a Territory this court leans towards the construction given by the Supreme Court of the Territory, *Copper Queen Mining Co.* v. *Arizona Board*, 206 U. S. 474, and unless there is manifest error this court will not disturb a decision of that court, *Fox* v. *Haarstick*, 156 U. S. 674, and in this case this court accepts the decision of the Supreme Court of Arizona in construing a revenue statute of that Territory.

The question of special benefit of assessment work and property to which it extends is one of fact. *Stanley* v. *Supervisors*, 121 U. S. 535, 550.

Property owners who have been duly notified of the meeting of commissioners in regard to a public improvement and assessment therefor are bound to take notice of the subsequent presentation in conformity with law of the report of such commissioners. *Lander* v. *Mercantile National Bank*, 186 U. S. 458.

One who promotes an improvement and appears before the commission to protest against the amount of the assessment on his property is precluded from attacking the legality of the assessment on the ground that he had no notice. *Wight* v. *Davidson*, 181 U. S. 371.

THE facts are stated in the opinion.

benefited. It may be that it is an answer to appellants' contention, and counsel recognize that it may be an answer, that appellants did not avail themselves of the remedy afforded by the law, that is, did not appeal from the order of the city council confirming the assessment. The finding of the court, however, is undoubtedly an answer to the contention if the commissioners were legally appointed. Of this there is a diversity of views between appellants and appellee, the appellants contending that paragraph 471 (§ 7) of the Revised Statutes of the Territory controls. It provides that the common council shall appoint three of its members, or any three competent persons, to "make examinations of the premises to be affected and make an assessment of the improvements contemplated." The appellee contends that paragraph 471 is not applicable, but that paragraph 467 controls. By that paragraph, when the improvements contemplated "require the taking or damaging of property, the proceedings for making just compensation therefor shall be the same as provided in title 21" of the Revised Statutes. Such proceedings were taken and in course of them the court appointed commissioners who, we have seen, examined the locality of the improvements and assessed the amount due from the property benefited. That this was the legal course to pursue was the view of the officers concerned with the administration of the law, including the court in which the proceedings for condemnation of the property were conducted, and, it may be inferred, was also the view of the Supreme Court of the Territory. The statute will bear that construction, and even if plausible objections can be urged against it, under the authorities which we have cited, we would not be justified in pronouncing it incorrect.

It is assigned as error that the trial court erred in not finding that no notice was given of the meetings of the common council upon the confirmation proceedings. The statute does not provide for notice of the meeting of the common council. It does provide for a notice of the meeting of the commissioners, and this notice was given, and it is found by the Su-

preme Court that Allen H. English appeared, through his attorney or agent, and made a formal protest against his assessment, but did not produce any witnesses nor did he specify any ground of objection. The law charged appellants with notice that the report would be presented to the common council and the report was actually filed with the common council a few days after the hearing. We think they were bound to take notice of this action. *Lander* v. *Mercantile National Bank*, 186 U. S. 458. See *Weyerhaueser* v. *Minnesota*, 176 U. S. 550. The record shows besides that English was a promoter of the improvement. It is true that he appeared before the commissioners and protested against his assessment, but he not only gave no reason for the protest, but his attorney expressly stated that the "protest was made for the sole purpose of saving the question of review," and that he "did not wish to intimate that he had any objection, but wanted to save his right in case he should have any." And it is found by the court that he knew of the enactment of the ordinance providing for the collection of the assessments and the issuing of bonds to pay for the improvement, that he interested himself in the sale of the bonds, and assisted in disposing of the same. There is, therefore, ground for the contention that such conduct constituted a waiver of all objections to the assessments. It certainly precludes him from saying that he had no notice of the proceedings before the common council. *Wight* v. *Davidson*, 181 U. S. 371.

Appellants pleaded that there was another action pending for the collection of the assessment against them, brought by the city of Tucson, and though conceding that the pleas were defective, urge that they were sufficient to put the court upon notice that the pending suit was not brought by the real party in interest, and that such party was the city of Tucson. The contention, however, is but a phase of the question that the general revenue law of the Territory was not repealed. There are other contentions, but they are without substantial merit.

Judgment affirmed.